1984: THE ORWELLIAN YEAR

By

Dr. S. Venkataraman, B.A., M.L. LL. D.,

Introduction.—No one is likely to shed a tear nor feel any sneaking regret for the year which has just expired, This is not only because of the cynical edge of Orwell's apocalyptic vision of the world and its denizens but also because it was very much of a blood-spattered year with a rising tide of international terrorism, highjacking of passenger planes for political blackmail, the politics of murder, attempts to destabilise governments by assassination, backlash of ethnic and communal violence, spectre of famine in large parts of North Africa etc.

1984 was the year which Orwell (pseudonym for Eric Arthur Blair, born in Bengal in 1903) had forecast would be the paradigm of a time in the near future when political repression would have attained its zenith and totalitarianism become the normal human condition. Orwell's last book bore of the title 1984, In this book, the world, in Orwell's vision, would have become by that year split into three super-states, Eurasia, Oceania and Eastasia, permanently at war though unable to destroy one another. They would be completely totalitarian societies and total conformity was expected and exacted from the subjects. It is true that almost every aggression visualised about the individual, his rights and personality has been with us all the time in one form or another. But the really frightening thing about Orwell's vision is that he has put them "all together in one packet". Orwell correctly foresaw that a world divided between super-powers will be perpetually at war, hot or cold, with war propaganda, war preparations playing havoc with the individual's thought processes and capacity to know the truth and to act as "a subject rather than merely serve as an object of history". To some extent reality has even outrun Orwell's prophesy of man's loss of individuality and reasoning power. In some advanced countries the average citizen has at present become, as it were, a mindless robot due to the dawn of managerial industrialism in which man builds machines which act like men and develop men who act like machines.

The nuclear arms race between the two super-powers is proceeding at an accelerated pace. Research in the direction of "star wars" in the future is assiduously prosecuted. The achievement of the "first strike" is stil the goal and motivation. The President of India referred to the situation as one of "humanity living in perpetual fear of universal destruction". The super-powers have shown no real inclination to shed their egotistic and ideological attitudes and postures. It is fondly hoped that the meeting between the American Secretary of State Mr. George Schultz and the Soviet Foreign Minister, Mr. Andrei Gromyko on 7th January marks a new turn in the problem of nuclear disarmament. "Constant dropping weareth away stones" is a familiar adage. Despair will lead us nowhere. In the words of G.C. Crowell:

> "As certain as stars at night or dawn after darkness,
> Inherent as the drift of the blowing grass.
> Whatever your despair or your frustration
> This, too, will pass".

The year that has expired witnessed the holding of the 3rd International Conference of Appellate Judges and Commonwealth Chief Justices at Delhi on 5th March, 1984, and succeeding days, Rakesh Sarma becoming the first Indian cosmonaut during the first week of April, Phu Dorji reaching the summit of Everest without oxygen on 23rd May, Miss Bachendri Pal setting foot on Mount Everest on the same day being the first Indian woman to do so, among other things. Notwithstanding these, 1984 has been a particularly painful year, in fact the worst since Independence. First came the terrible massacre in Assam. Later Punjab entered into a blood-bath engendered by communal fanaticism and fury. Then came the abounding shame of Mrs. Indira Gandhi's assassination and its aftermath of communal frenzy, the ethnic violence and killing of the Tamils in Sri Lanka and Nature's fury resulting in damage to property in Tamil Nadu and Andhra Pradesh.

Crystal-gazing is not needed to foresee 1985 as a comparatively better year for the country though it will not be easy to efface the scars left behind by the traumatic events of 1984.

The late Mrs. Indira Gandhi.—An assasin's bullet has tragically put an end to the life of Mrs. Indira Gandhi who dominated public life for a generation and for well nigh sixteen years as Prime Minister. Not since Mahatma Gandhi's assassination has the Indian polity suffered such a shattering and traumatic blow. Mrs. Indira Gandhi was a strong personality, intellectual and charismatic. What else can a daughter of Jawaharlal Nehru and grand-daughter of Motilal Nehru be? Widely read, widely travelled, intimately associated with her father during his long tenure as Prime Minister she had gained rich experience in politics and administration and that enabled her to easily grasp world events and trends and play a decisive role in her confabulations with heads of governments and world leaders. She had the necessary strong will to face up to tough customers like President Nixon with his blusterings and anti-Indian stance during the war with Pakistan. So great was the esteem for her in international circles that she was unanimously elected as the Chair-person of the Non-Aligned Nations Organisation. It is true that on the domestic front there was controversy as to the manner in which democracy was functioning in the country. Even so, it cannot be gainsaid that she took India to great heights as a developing nation in industrialisation, achicvement of self sufficiency in food production etc.

In his very first letter written from the Nainital prison to his daughter on 19th November, 1930, her 13th birthday, Jawaharlal Nehru reminded her of the thrill she had experienced on reading for the first time the story of Joan of Arc and exhorted her: "You have the rare good fortune of witnessing in person the freedom fight which is being waged in the country. It is my keen desire that you should become an outstanding courageous fighter in the service of the motherland". How well and nobly she lived up to it is now part of the country's history. The few lines jotted in her diary which came to light after her death incomplete and described as a sort of will, reveal a high plane of spiritual thought and her intense pride in her country and of being an Indian. The statement made a day before her death at a meeting in Orissa "Even if I die for the service of the nation, I shall be proud of it. Every drop of my blood, I am sure, will contribute to the growth of the nation and make it strong and dynamic" reflects her great love for the country. Mrs. Indira Gandhi had become the indomitable symbol of India's self-respect and self confidence. With her passing away an era in the country's chequered history is over. As has been justly said: "An anguished nation will remember Indira Gandhi as one who led the country to great heights, saw a great vision and created opportunities for its realisation though she did not stay the full course".

The new Prime Minister.—The mantle of Indira Gandhi has fallen on Rajiv Gandhi. When the President nominated him as interim Prime Minister immediately after Mrs. Indira Gandhi's assassination the action was regarded by some political leaders as over-looking previous conventions of the seniormost cabinet minister being ehosen for the post. Political quidnuncs and even leaders referred to him as inexperienced, immature, a sort of "babe in the woods", The résult of the elections to the Lok Sabha has however amply vindicated the President's action and Mr. Rajiv Gandhi has received a massive popular mandate to lead the country. The charge of inexperiance lacks point in view of the family background. There is a popular saying: "One need not teach a fishling how to swim" Mr. Rajiv Gandhi has been, as it were, on his toes from the time he took over as Prime Minister and shown himself as alert, capable of quick and bold decisions and prompt action. His leadership during the interrugnum between assumption of charge and the elections over a period of two months has been, by and large correct and the election result shows that he is "his own man" and not just "relative of his relatives". President Reagan hit the point when he remarked that the election result is a fitting response to "the wise and steady leadership provided by Mr. Rajiv Gandhi during the last two difficult months". These are no doubt early days but there is no reason to think that Mr. Gandhi would falter or fail in discharging his great responsibility as Prime Minister and as Chair-person of the Non-Aligned Nations organisation.

Lok Sabha Election.—The eighth Lok Sabha elections have made history. Even in ordinary times Parliamentary elections in India attract much interest from outside in view of of the fact thas the country is the largest

demacracy with an electorate larger than anywhere else. This year's elections have evoked even more interest since they were held immediately following the assassination of a great Prime Minister who, sometimes and by some, was identified with being "India" itself. Coming on the heels of a year of unprecedented shocks to the body politic and the morale of the people including world-wide speculation about the ability of Indians to hold togather without disintegrating, the election results constitute a "stunning mandate" for "one centre and one party". The success of the ruling party is unique in character, scale and quality. The philosophy and process of democracy were neatly set forth by Winston Churchill in these words: 'At the bottom of all tributes paid to democracy is the little man, walking into a booth, with a little pencil making a little cross on a little bit of paper—no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point". The words remain as true to day as when they were uttered. No wonder political researchers feel that the 1984 election verdict is strong confirmation that the Indian voter has, over the years, learnt to cast his or her choice in "direct envolved and clear-cut way" suggesting 'truly national pattern of polical behaviour'. For the first time since India became independent, the party voted to power has received well over fifty per cent of the popular votes polled and four-fifth of the seats in the Lok Sabha. It is also seen that wherever they felt a grievance that what had happened in a State was not correct as in Andhra Pradesh they had not hesitated to express their disapproval. The 1984 result consitutes at one end a tremendous national mass protest against the savage assassination of Mrs. Gandhi. At the same time it signifies emergence of a popular mandate won "across the board in every zone and social cross-section in a vast country through the world's largest electoral experienee". It records also an overwhelming approval of the present Prime Minister at the level of the average voter, rendering criticism and allegations of "dynastic succession" meaningless and irrelevant. The opposition parties whether by by way of "aggregation or alliance" had only one cementing force, namely, a stop-Indira feeling, which melted away on her death. Be that as it may, the 1984 election result is a categoric endorsement of the plea for strengthening the unity and integrity of the country, maintenance of communal harmony, and ensuring a fair deal to the minorities and weaker sections of the people, It is noteworthy that the new Lok Sabha will have the largest number of women representatives so far with as many as thirtysix women candidates emerging victorious at the polls.

Social Justice.—Social justice is a constitutional pledge, The Preamble to the Constitution seems to distinguish between social and economic justice. It has however, been generally regarded that the two categories run into each other and cannot be viewed in isolation, the one apart from the other. The Preamble and Part IV highlight social justice as paramount in the governance of the country. This is with a view to create a milieu in which the small man who had till the country's independence little opportunity of perceiving and participating in the immense possibilities of growth through organised effort is enabled to put in his best in the increase of a higher standard of life for himself with full recognition of the dignity of his life and equality of opportunity with others and increased prosperity for the country.

Social justice is difficult to define and cannot be accommodated into the strait-jacket of a formula. In *Sridharan Motor Service* v. *Industrial Tribunal*, (1959) 1 Lab.L.J. 380 Justice Balakrishna Iyer observed: "Concepts of social justice have varied with age and time. What would have appeared to be indubitable social justice to a Norman or Saxon in the days of William the Conqueror will not be recognised as such in England today. What may appear to be incontrovertible social justice to a resident of Qnbec may wear a different aspect to a resident of Peking If it could be possible for Confucius, Manu, Hammurabi and Solomon to meet together at a Conference table, I doubt whether they would be able to evolve agreed formulas as to what constitutes social justice". In *Muir Mills Co. Ltd.* v. *Sutti Mills Mazdur Union* 1955 S.C.J. 214: A.I.R. 1955 S.C. 170 Bhagwati, J described 'social justice, as "a very vague and indeterminate expression" and that "the concept of social justice did not emanate from the fanciful notions of any adjudicator but must have a more solid foundation". On the other hand Chagla

C.J., in rejecting the argument that the Court should not import its own notions of social justicc in interpreting the statutory provisions in *Prakash Cottan Mills* v. *State of Bombay*, 59 Bom. L.R. 830, 844—felt that though difficult to define social justice was, in the words of Holmes J, an " inarticulate major premise" which was personal and individual to every Court and every Judge depending on the Judge's outlook on life and society. Allen in his Aspects of Justice, 1958, p. 31 observes in regard to social justice: "we hear much today of social justice. I am not sure that they who use the term most glibly know very clearly what they mean by it. Some mean distribution or redistribution of wealth ; some interpret it as equality of opportunity—a misleading term, since opportunity can never be equal among human beings who have unequal capacities to grasp it; many, I suspect, mean simply that it is unjust that anybody should be more fortunate than themselves; and the more intelligent mean that it is just—I would rather say benevolent that every effort should be made at least to mitigate the asperities of natural human inequality and that no obstacles should be offered but rather help afforded, to practicable opportunities of self-improvement." Apart from the difficulties besetting the understanding of what social justice connotes it is clear that mere changes in law through legislation may not go far, for it is a sad experience that enacted laws often remain a dead letter unless public opinion is educated and ready to receive and respond to them. The Dowry Prohibition Act is an eloquent example. *In S.P. Gupta* v. *Union of India*[1] Jutice Pathak aptly observed: "Traditions and beliefs which governed life until yesterday and held an important place in the polity cannot be rooted out overnight. Change to be valid must find general acceptance and its pace will be determined by the education of experience. The past is ever with us and when the present takes hold it must do so conscious of its responsibility to the future".

As to the role of Courts apropos social justice it was observed in *Somasundara* v. *Krishna*[2] "In these days when social Justice is the order of the day, Courts also have to align themselves with such environment which would generate harmony not only between Court and litigant but also between the Court and the community at large".

Social Justice was one of the questions considered at the Third International Conference of Appellate Judges and Commonwealth Chief Justices attended by 60 top Judges from all over the world apart from the Chief Justices of the High Courts in this country and inaugurated by the late Prime Minister Mrs. Indira Gandhi on 5th March at Delhi. The Prime Minister observed that India was nowhere near the level of social justice at which it aimed, that one of the crucial issues of social justice was redistribution of land, that legislative measures were often thwarted by legal technicalities and prejudices, that a stay order by the smallest Court can thwart or delay major issues affecting the lives and hopes of hundreds and thousands of families, that social justice had become imperative due to excessive emphasis on rights which has characterised the political ideas and movements of the last two centuries largely ignoring obligations and often resorting to violence and that the Indian Constitution had made a symbolic beginning to instil a sense of responsibility by adding a chapter on fundamental duties. The Chief Justice of India pointed out that the challenge of social justice has to be accepted and answered on the basis of day to day experience; that true reforms come out of a living awareness of practical needs and experience. not out of dogmas and prejudices; that there were many tools of law like legal aid and legal literacy to make law an instrument of social change and that never in the history of the world was equality more greatly needed than today. Sir Harry Gibbs, Chief Justice of Australia who delivered the keynote address stated though the Courts did not have the power and duty which a bill of rights conferred they should still endeavour to give the law an operation to mitgate its severity especially in its operation for ordinary people who might otherwise become its victims by reason of ignarance, misiortune or ordinary human weaknesses and that it was necessary to find a way to shorten the length of the trials by more clearly defining the real issues. Justice Bhagwati of the Supreme Court pleaded for taking steps to make law able to meet the changing social concepts and values and for recasting law and

1. A.I.R. 1982 S.C. 149.
2. (1980) 1 M.L.J. 40, 41.

reinterpreting them to make them more dynamic which alone can ensure that they did not lag behind in achieving real social justice, Mr. E.M. Fernando, Chief Justice of the Supreme Court of the Phillipines observed that the principle of social justice demands that all men should have an equal share in all those advantages which are commonly desired and which conduce to human well-being. The principle is not identical with the demand for equal treatment to all; it rather requires 'preferential treatment for the under-priviledgd in a given society who lack the advantages possessed by others, It requires that the poverty stricken masses whether in industrial or peasant society should not be left at the mercy of circumstances over which they have no control. According to the Chief Justice social justice is neither communism nor atavism but the humanisation of laws and the equalisation of the social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. The Chief Justice also observed that in modern times the role of a judge under a Constitution containing provisions aimed at achieving social justice including one for judicial review of the constitutionality of legislation and executive action is far from minimal, and what matters under the functional standpoint is not the possession of the power of judicial review but its exercise.

From the views set out supra it is fairly clear that social Justice does not admit of any precise definition but has to be conceptualised. Legislation naturally is the principal instrument for achieving social justice; judicial interpretation also helps. Social justice includes economic justice. It involves something more than equality and implies preferential treatment to the under-privileged.

Law's delays and arrears in Courts.—This has been a perennial problem and not peculiar to India alone. There is no single or royal recipe to cure the malady. Shakespeare ranks law's delay as among the "whips and scorns of time" (Hamlet, Act III Scene 1). Dickens tells us how it exhausts finances, patience, courage and hope (Bleak House, Ch. 1). It is said that law's delays' in India, find their apogee. The normal state of litigation in India moves through various courts of appeal almost as imperceptibly as the major planets' progress through space, that it is in sooth a gift from the west which in those days seemed to think that the wheels of the law like the wheels of God should grind slowly, which often ground most of those concerned -Judge, counsel and litigants out of existence in the process". From a reply to a question in Parliament on 12th December 1983 it was clear that as on November 1 of that year as many as 1, 37, 035 cases including 50000 Civil Miscellaneous Petitions and 27900 civil appeals were pending in the Supreme Court. The story is the same with reference to the High Courts and other Courts. The arrears "like Alice's neck just simply grow'd and grow'd". No topic is being so frequently discussed as solutions regarding law's delay and court disposal. On this subject Lord Lane, Lord Chief Justice of England remarked: "One would like to return to simple laws, simple procedure, speedy hearing and free representation for all who required it. However in the increasingly complex world in which we live, such a hope is nothing more than a pipe-dream, " Committees have been appointed at different times, and measures for tackling the problem have been suggested. They include setting up of more Courts; appointment of more Judges; appointment of better calibre Judges; constitution of arbitral and administrative Tribunals: increasing the number of working days for the courts; limiting time for counsel's arguments as in the U.S.A. presentation of written arguments; restricting citation of cases; following the Privy Council practice having one judgment only without separate

judgments in the higher courts; making laws simpler; simplifying procedure and streamlining the same; avoiding delaying tactics and refusal of adjournments ordinarily; restriction of the number of appeals; speedy hearing and so on. It has also to be recognised that like population explosion there has also been litigation explosion due to factors like the growth of population, the under-privileged classes having become increasingly conscious of their rights, availabilty of the relatively speedier and less costly writ procedure and other factors. There is also little point in saying that it is all due to the present coionial system of judiciary, a legacy of the Britsih rule. At the same ttme one cannot take things easy leading to the collapse of the system.

DOCTRINE OF PROMISSORY ESTOPPEL.

By

D.S.N.Somayajulu, Lecturer, Faculty of Law, Andhra University, Waltair.

Parliamentary legislation is drafted in broad and general terms conferring power on the executive. The executive or the administrator is left with the choice to apply the law to actual, specific, and factual situations, as the situations vary from case to case, and no norms could be drawn in advance as to the manner in which the executive must exercise the powers confered on it, *M.P. Jain & S.N.Jain: "Principles of Administrative Law", III Edition (1979) p.310.* With the large discretionary powers the executive not only interprets the law, or adjudicates a dispute, but it is also common for it to make advance pronouncements (other than delegated legislation) regarding, the manner in which it would exercise its discretion or interpret the law before an occasion to do so in a particular case has actually arisen (Ibid at P.633). Occasionally, it may give opinion or, render advice to a particular factual situation. Sometimes, the administrator makes promises or announces schemes. The question which often, arises is how far the official representation, assurance, promise or advice can be relied upon. Can the administration be bound, as an ordinary citizen would be, when some one acts upon a promise under or an assurance given by it? The question here is, can the doctrine of estoppel be applied against the administration, whether the administration would be estopped later on from going back on the advice given by it, or from retreating from the promise it may have made. (Ibid)

Normally, the Government is not bound by the advice, interpretation or assurance, which may have been made on its behalf even though a private individual in a similar situation may have been bound. *(Ibid).* The reason as that there can be no estoppel against a statute or estoppel cannot prevent the application of a statutory rule. It is the function of the legislature to prescribe the law and not the official (or, the authority or an individual) and the official has no right to modify the statutory provision. If the administration is considered to be bound by its own representation made, or advice given by it which may be contrary to law, then it would amount to executive changing the statutory provisions. If the doctrine of estoppel were to apply then it could be used to give de facto validity to ultra vires administrative actions. *(Ibid.)*

An attempt is made in this essay to examine with the help of cases how far the State is bound by its promises and the exceptions which are recognised in favour of the State.

The origin of the doctrine of promissory estoppel dates back to the decisions of House of Lords in *Hughes v. Metropolitan Rly. Co., (1877)2 A.C.439*, and *Birmingham and District Land Co. v. London and North Western Rly. Co., (1888)40 Ch.D.268.* This doctrine was, again rediscovered by Denning, J., as he then was in his celebrated judgment in *Central London Property Trust Ltd. v. High Trees House Ltd., (1956)1 All E.R. 256.* This doctrine has been variously called as 'promissory estoppel', 'equitable estoppel', 'quasi-estoppel' and 'new estoppel'. It is not really based on the principle of estoppel, but it is a doctrine evolved by equity in order to prevent injustice where a promise is made by a person knowing that it would in fact be acted upon and it is so acted on and that it is inequitable to allow the party making the promise to go back upon it, *(M.P.Sugar Mills v. State of Uttar Pradesh, (1979)2 S.C.J. 185 : (1979)2 S.C.C.409 : (1979)2 S.C.R. 641 : 44 S.T.C.42 : 118 I.T.R.326: A.I.R. 1979 S.C.621* (hereinafter cited M.P.Sugar Mills). Lord Denning himself expressly made a distinction between ordinary estoppel and promissory estoppel in *High Trees Case, (1956)1 All E.R.256.*

He held that the cases like the one before him were "not cases of estoppel in the strict sense. They are really promises, promises intended to be binding, intended to be acted upon and in fact

acted upon. Jenkins, C.J., also pointed out in *Municipal Corporation of Bombay v. Secretary of State, (1905) I.L.R.29 Bom.580 at p.607,* that the doctrine is often treated as one of estoppel, but I doubt whether this is correct, though it may be a convenient name to apply. The doctrine of promissory estoppel need not therefore, be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the Courts for doing justice and there is no reason why it should be given only a limited application by way of defence, *(M.P.Sugar Mills at P.632).*

It is heartening to find that in India not only has the doctrine of promissory estoppel been adopted in fulness but it has been recognised as affording a cause of action to the person to whom the promise is made, *(Ibid at P.640).* The requirement of consideration has not been allowed to stand in the way of enforcement of such promise. The Courts have categorically negatived the defence of executive necessity and applied the doctrine of promissory estoppel against the Government, *(Ibid.).*

It is interesting to note that the doctrine was applied in India way back in 1880, long before the doctrine was formulated by Denning, J., in England. A Division Bench of the Calcutta High Court applied the doctrine of promissory estoppel and recognised a cause of action founded upon it in *Ganges Manufacturing Co. v. Sourujmull, (1880) I.L.R. 5 Cal. 669.* This doctrine was invoked against the Government in *Municipal Corporation of Bombay v. Secretary of State, (1905) I.L.R.29 Bom. 580.* The next important case decided by the Court was *Collector of Bombay v. Municipal Corporation of Bombay, 1951 S.C.J. 752 : (1952) S.C.R.43 : A.I.R. 1951 S.C.469.* In 1865 the Government of Bombay called upon the predecessor in title of the Municipal Corporation of Bombay to remove old markets from a certain site and vacate it and on the application of the Municipal Commissioner, the Government passed a resolution approving and authorising the grant of another rent free site to the Municipality. In 1940 the Collector of Bombay assessed the new site to land revenue and the Municipal Corporation thereupon filed a suit for a declaration that the order of assessment was *ultra vires* and it was entitled to hold the land for ever without payment of any assessment. *(Ibid.)*

Majority Judges held that the Government was not entitled to assess land revenue on the land in question, because the Municipal Corporation had taken possession of the land in terms of the Government resolution and had continued in such possession openly, uninterruptedly and of right for over seventy years and thereby acquired the limited title it had been prescribing for during the period, that is to say, the right to hold the land in perpetuity free of rent. *(Ibid.)*

Chandrasekhara Aiyer, J., while agreeing with the majority, *(Ibid.)* pointed out that the Government could not be allowed to go back on the representation made by it. He observed that even if the resolution of the Government amounted merely to "holding out of a promise that no rent will be charged in the future, the Government must be allowed in the circumstances of this case to have bound themselves to fulfil it. Whether it is the equity recognised in *Ramsden's Case, (1866)1 H.L.R. 129,* or it is some other form of equity is not of much importance. Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power".

The doctrine of promissory estoppel came into prominence in India with the decision of the Supreme Court in *Union of India v. Anglo Afgan Agencies, (1968)2 S.C.R. 366 : A.I.R. 1968 S.C.718.* The Textile Commissioner published a scheme called the export promotion scheme under which the respondents were entitled to get an import entitlement certificate equal to 100 per cent of the f.o.b., value of their exports. *(Ibid at P.721).* Under Clause (10) of the Scheme the Textile Commissioner had authority, if it was found that a fraudulent attempt was made to secure an import certificate

in excess of the value of the goods exported to reduce the import certificate, (Ibid.). The respondents who were exporters of woolen goods were granted an export entitlement certificate less than what they were entitled under the scheme.

Respondents contended that the scheme was statutory in character and obliged the Textile Commissioner, unless the exporter was after due investigation under Clause (10) of the scheme shown to have 'over invoiced' the goods exported to issue import certificates of the full value of the exports. *(Ibid.)* Respondents also contended that the order of the Textile Commissioner was made without giving them an opportunity to explain the materials on the basis of which the 'import entitlement of them was proposed to be reduced'. *(Ibid.)* The Union of India contended that to enforce on it the policy announced in the scheme would amount to enforcing contractual rights even though the contract did not comply with Article 299. *(Ibid atP.723).* The Court rejected the argument holding that the respondents did not seek to enforce a contractual right, but an equity arising, in their favour as a result of the representation made on behalf of the Union of India in the export promotion scheme, and the action taken by the respondents acting upon that representation under the belief that the Government would carry out the representation made by it. *(Ibid at P.726).*

Without deciding the question whether the import policy was legislative or executive in character, the Court held even if it were executive in character the respondent who had acted to his prejudice because of the failure to carry out the promises of the scheme is entitled to resort to Court and claim that obligation imposed upon the Textile Commissioner by the scheme be ordered to be carried out. *(Ibid.).* The Court held that an equity has arisen in favour of respondent as a result of the representation made on behalf of the Government in the export promotion scheme. *(Ibid).* The Court relied upon the judgment of Denning,J., in *Robertson v. Minister of Pensions, (1949)1 K.B. 227,* and the observations of Chandrasekhara Aiyar, J., in *Collector of Bombay v. Municipal Corporation of the City of Bombay, 1951 S.C.J.752: (1952) S.C.R.43 : A.I.R. 1951 S.C. 469.*

The Court rejected the plea "that the Textile Commissioner is the sole Judge of the quantum of import licence to be granted to an exporter, and that the Courts are powerless to grant relief, if the promised import licence is not given to an exporter who has acted to his prejudice relying upon the representation. To concede that power would be to strike at the very root of the rule of law". *(Ibid.)*

The Court held, that the Textile Commissioner was bound to act in a manner consistent with the "basic concepts of justice and fair play" and if he does not the Court can compel him to fulfil his obligation under the scheme. *(Ibid.)* In order to do justice to the exporters the Court pressed into service nearly all the well known concepts of administrative law namely (1) Rule of law (2) Judicial Review (3) Natural Justice (4) Access to Courts and the rights of redress and (5) promissory estoppel.

The Anglo-Afgan case emphasised the duty of surveillance entrusted to the Courts for the protection of the citizen. Shah, J., held that the Textile Commissioner's refusal to grant 100 percent import entitlement was for no defined and disclosed reason. *(Ibid.)* The export promotion scheme was made to further the purpose of the Act. *(Ibid at P.723).*

"Whenever the public authority acts arbitrarily the Courts have a duty to interfere. The fact that the scheme was executive in character is no reason why the Courts should give up the task and abandon their duty to protect citizens'. *(Ibid.)*

Anglo-Afgan was hailed as an epoch making decision and as the "most eloquent exposition" of the doctrine of promissory estoppel in India. Anglo-Afgan was followed in *Moti Lal Padampat Sugar Mills Co. (P) Ltd. v. State of Uttar Pradesh, (1979)2 S.C.J. 185 : (1979)2 S.C.R.641:*

(1978)2 S.C.C. 409 : A.I.R. 1979 S.C.621, (hereinafter cited as M.P.Sugar Mills). In this case the State Government had granted an exemption to the mills from sales tax for a period of three years under Sec.4-A of the Uttar Pradesh Sales Tax Act to all new industrial units with a view to enable them" to increase production of the goods in the State. *(Ibid. at P-625).* The appellant would be entitled to exemption from sales tax in respect of sales effected in Uttar Pradesh for a period of three years from the date of commencement of the production. *(Ibid.).* The Court held that it is not necessary in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise. *(Ibid at P-650, 651).* The maker of the representation cannot be allowed to resile from its promise. *(Ibid.)*

The modern doctrine of promissory estoppel is a recent advance in Public Law. The Common Law doctrine of estoppel contained in the Evidence Act, 1872 is but a shadow of its modern self, *(Bansal Exports (P) Ltd. v. Union of India, A.I.R. 1983, Del.445 at 452.* Orthdox legal concepts have been discarded. Detriment is no longer required to be proved. The current trend of decisions is to protect the individual from sustaining loss as a result of maladministration by public authorities. *(Ibid.). M.P.Sugar Mills, (1979)2 S.C.J.185 : (1979)2 S.C.R. 641,* is a landmark in this direction. Estoppel was raised against the Government because estoppel neither prevented the performance of a duty nor the exercise of a discretion conferred on it for the benefit of the public. *(Ibid.)* On the other hand, it advanced justice. The Court held that the promise must be honoured on the faith of which a party had acted and altered its position. It refused to allow the maker of a representation to act inconsistently with it. *(Ibid.)*

The doctrine of promissory estoppel again came up for consideration in *Jitram Shiv Kumar v. State of Haryana, A.I.R.1980 S.C.1285* (hereinafter referred to as Jitram Shiv Kumar). The Municipal Committee of Bahadurgarh established Fateh mandi, with a view to improve trade in the areas. The Municipal Committee by its resolutions in 1916 and 1917 exempted the purchasers of the plots for sale in the mandi from payment of Octroi duty on goods imported within the said mandi for ever. *(Ibid at P.1287).* Subsequently in 1954 the Municipal Committee by its resolution changed its mind and reimposed Octroi duty on the goods imported in Fateh Mandi. (Ibid. at P.1288). The Punjab Government annulled this resolution. *(Ibid.)* The State of Haryana came into existence in 1964 under the Punjab Re-organisation Act. The Haryana Government approved the resolution of the Municipal Committee reimposing Octroi duty on goods imported into the Mandi cancelling the earlier resolutions which exempted the levy of Octroi duty, *(Ibid.).*

The Court held the plea of estoppel was not available against the Government. *(Ibid at P.1289).* The action of the Government was well within the powers conferred on it under the Municiapl statute.The Municipal Committee had no authority to exempt the levy of Octroi duty. The resolutions of the Municipal Committee were *ultra vires.*When a public authority acted beyond the scope of its authority the plea of estoppel was not available to prevent the authority from acting according to law. *(Ibid.).* It was in public interest that no such plea should be allowed. Promissory estoppel cannot be availed against the exercise of legislative power of the State. *(Ibid.)*

Kailasam,J., subjected Bhagwati, J.'s, judgment in *M.P.Sugar Mills, (1979)2 S.C.J.185 : (1979)2 S.C.R.641 : A.I.R.1979 S.C.621 : (1979)2 S.C.C.409,* to trenchant criticism. He held that the judgment was not in accordance with the view consistently taken by the Court in some respects. (Ibid. at P.1302). According to him Anglo-Afghan's decision was not properly construed. According to him all that the Anglo-Afghan's case purports to lay down was that the Court can enforce an obligation incurred by an authority on which another has acted upon and put himself in a disadvantageous position, when the authority resiles arbitrarily on mere whim or on some

undefined and undisclosed grounds of necessity. *(Ibid.)*.

Referring to Bhagwati, J.'s view in *M.P.Sugar Mills, (1979)2 S.C.J.185 : A.I.R.1979 S.C.621 : (1979)2 S.C.C.409 : (1979)2 S.C.R.641*, that "where the Government makes a promise knowing or intended that it would be acted on by the promisee and in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Art.299 of the Constitution, Kailasam, J., observed that the above view would be right if read with qualifications laid down in the Anglo-Afghan Agencies and other cases, Jitram Shiv Kumar, A.I.R.1980 S.C.1285 at 1303.

According to Kailasam, J., the decision in *Century Spinning and Manufacturing Co. Ltd. v. The Ulhasnagar Municipal Council, (1970)2 S.C.J. 689 : (1970)3 S.C.R.854 : A.I.R. 1971 S.C.1021*, was under stood by Bhagwati, J., "as refusing to make a distinction between the Private Individual and Public body so far as the doctrine of Promissory Estoppel". These observations would be correct only if they are read with the exceptions recognised by Bhagwati, J., himself elsewhere in his judgment with other restrictions imposed by judgment of this Court, *Jitram Shiv Kumar, A.I.R.1980 S.C. 1285 at 1303*.

In *Jitram Shiv Kumar's case*, rectness of Anglo-Afghan could not be doubted by the two Judges (Kailasam and M.Fazal Ali, JJ.) because Anglo-Afghan was a decision of three Judges (Shah, Sikri and Shelat, JJ.).

The doctrine of promissory estoppel came for consideration in *Gujarat State Financial Corporation v. M/s. Lotus Hotels Pvt. Ltd., (1983)2 Comp L.J. 202 : (1983)3 S.C.C.379 : A.I.R. 1983 S.C.848.*

The appellant Gujarat State Financial Corporation set up under Sec.3 of the State Financial Corporation Act, entered into an agreement in performance of its statutory duty to advance a loan of Rs.30 lakhs to the respondent company, *(Ibid. at P.-851)*. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further liabilities to implement and execute the project. On the corporation refusing to disburse the loan, the Court held following *M.P.Sugar Mills, (1979)2 S.C.J.185: (1979)2 S.C.R. 641 : A.I.R. 1979 S.C.621*, that the promissory estoppel would certainly estop the corporation from backing out of its obligation arising from a solemn promise made by it to the respondent, *(Ibid at P.852)*. The respondent acting upon the solemn promise made by the appellant incurred huge expenditure and if the appellant is not held to its promise, the respondent would be put in a very disadvantageous position and therefore also the power of promissory estoppel can be invoked in this case, *(Ibid.)*.

The Delhi High Court discussed the scope of the doctrine of promissory estoppel in India in *Bansal Exports (P) Ltd. v. Union of India, A.I.R. 1983 Del. 445*, (hereinafter referred to as Bansal Exports).

The Export Control Order 1977 permitted the manufactures and products wholly or mainly of silver with more than 50% of silver contents, excluding silver zari goods to be exported under open general licence, *(Ibid at P.448)*. The Central Government changed the Policy in 1979. Under the changed Policy this item was deleted from the Open General Licence and was placed under the heading, "on merits which meant that the exporter concerned will have to apply to the licencing authority for permission or licence to export", *(Ibid.)*. In consequence of the change of policy public notices were issued. The first public notice informed that the provisions of paragraph 316 of the hand book of Import and Export Procedures will not be applicable to any "Preban Committments" consequent to this public notice. [Para 316 deals with guidelines for Import and Export, sub-para (6) of Para 316 itself says that

these guidelines "shall not confer any right on the persons concerned to the grant of any export licence or permission to export". It was said that all such cases will be decided "on merits" only. The second notice set out the new guidelines for deciding the 'preban' or 'precontrol' cases affected by the first public notice, *(Ibid.)*.

The Court held that the Government Policy framed under the Imports and Exports (Control) Act, 1977 was liable to be changed in the public interest according to the needs of the country, (Ibid at P.449). By the first public notice the Government did not impose a ban on export of the goods in question. The order only restricted the export to cases decided "on merits". The second notice substituted new guidelines in place of para 316 of the Hand Book of Import Export Procedures. *(Ibid.)*

The Court rejected the plea that para 316 of the Hand Book constituted a 'statutory promise' against which the doctrine of Promissory Estoppel can be claimed. *(Ibid.)*. Even if they were 'statutory promise' they can be changed by the statutory authority. When Sec.3 of the Imports and Exports (Control) Act allows the export control orders to be amended from time to time it is difficult to see why Para 316 of the Hand Book cannot be replaced by a new set of guidelines for conserving a certain commodity in the national or public interest. *(Ibid.)*

LEGISLATIVE POWERS OF THE ADMINISTRATION:-

Whenever promissory estoppel is invoked what the Court ought to ask is whether the communication coming from the Government is legislative or executive in character. The principle of Estoppel is not available against the Government in exercise of legislative, sovereign or executive power, *Bihar Eastern Gangetric Fishermen Co-op. Society Ltd. v. Sipahi Singh, (1977)4 S.C.C.145 : A.I.R.1977 S.C.2149; Excise Commissioner, U.P., Allahabad. v. Ram Kumar,(1976)3 S.C.C.540: A.I.R. 1976 S.C.2237, State of Kerala v. Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd., (1973)2 S.C.C. 713 : A.I.R. 1973 S.C. 2734 : (1973) K.L.T. 896.* In *Excise Commissioner, U.P., Allahabad v. Ram Kumar, (1976)3 S.C.C.540 : A.I.R.1977 S.C.2237*, respondents were the highest bidders in an auction for the exclusive manufacture and selling of liquor in the State of Uttar Pradesh. The Government announced before holding the auction the rates of excise duty and prices of different varieties of country liquor and the conditions of licence. On the day following the day when the licences were granted the Government issued a notification under Sec.3-A and 4 of U.P. Sales Tax Act, 1948 superseding the earlier notification exempting the payment of Sales Tax and imposing Sales Tax on the turn over in respect of country liquor at the rate of 10 paise per rupee. The Court upheld the notification, and stated that the Government is not estopped or precluded from subjecting the sales of liquor to tax if it felt impelled to do so in the interest of revenue of the State.

In the exercise of its statutory power, the Government cannot fetter itself or its successors. It cannot divest itself of the freedom of action. *(Ibid.)*. A public authority created to exercise statutory powers vested in the public interest under the authority of the legislature cannot act inconsistently or incompatibly with the powers for which the statutory powers have been granted, *Bansal Exports, A.I.R.198? Del. 445 at 453*. Estoppel would create contractual fetters. The doctrine of estoppel would be excluded whenever its operation would fetter the powers of a public body in a way that could not be done by a contract, *Birdale District Electric Supply Co. Ltd. v. South Port Corporation, (1926) A.C.355 at 364.*

An estoppel cannot be raised to prevent the exercise of a statutory discretion or to prevent or excuse the performance of statutory duty, *Jit Ram Shiv Kumar, A.I.R.1980 S.C. 1285*. A further extension of the doctrine of promissory estoppel would evade the general principle set out in a long-line of cases of whom the opinion of the Privy Council is notable. *(Ibid.)*. Therefore, the public authority

cannot by contract disable itself from exercising a statutory power, Per Megaw, L.J., In *Western Fish Products v. Penwith D.C. (1981)2 All. E.R. 204 at 219.* The application of promissory estoppel would disable the Government to assert its powers for public good, *Maritime Electric Co. v. General Dairies Ltd., (1937) A.C. 610.*

In view of the decision of the Constitution Bench in *Seth Sat Narain v. Dominion of India, (1968)2 S.C.R.335,* the decision of four Judges in *Ram Kumar Case, (1976)3 S.C.C.540 : A.I.R. 1976 S.C. 2237,* cannot be accepted as laying down the correct view that the doctrine does not apply against the executive power and the executive is free to do what it likes Anglo-Afghan is a milestone on the road to rule of law, (Rohatagi, J., in *Bansal Exports, A.I.R. 1983 Del. 445 at 453.)*

CONTROL OF ADMINISTRATIVE POWERS:

Promissory estoppel has produced most beneficial results in protecting the individual against the executive excesses. The doctrine of promissory estoppel can be properly pressed against public authorities if the communication is executive in character as was done in ANGLO AFGHAN against the *Textile Commissioner, (1968)2 S.C.R. 366 : A.I.R. 1968 S.C. 718,* and against the Chief Secretary in *M.P.Sugar Mills, (1979)2 S.C.J. 621 : (1979)2 S.C.J.185: (1979)2 S.C.R.641.* The State was held bound in both cases by its representation - in ANGLO AFGHAN by the representation made to the exporters in the export promotion scheme, (1968)2 S.C.R.366: A.I.R. 1968 S.C. 718 at 720 and in M.P.Sugar Mills, (1979)2 S.C.J. 185 : (1979)2 S.C.R. 641 : A.I.R.1979 S.C. 621, by a written assurance given by the Chief Secretary under his own hand to the mills that it will enjoy a sales tax holiday for 3 years, A.I.R. 1979 S.C. 621 at 625 : (1979)2 S.C.J. 185 : (1979)2 S.C.R.641. In both the cases the Court came to the conclusion that to allow the public authority to act inconsistently with its representation would work injustice to the individual without any countervailing benefit for the public, (1968)2 S.C.R. 366 : A.I.R. 1968 S.C. 718 at 723; (1979)2 S.C.J. 185 : (1979)2 S.C.R. 641 : A.I.R. 1979 S.C. 621 at 644.

In *Bansal Exports, A.I.R. 1983 Del. 445 at 454,* the export control order was held to be legislative in character because it was published in the official gazette and every one can know what the policy is as regards the export of manufactures and products having 50% or less silver content.

Petitioners complained that the new guidelines which replaced the old guidelines (Para 295) prejudicially affected their rights as their pre-control commitments were no longer saved in the new guidelines as was done under old para 295. *(Ibid at P. 455).* According to them the Government should be held bound by the representation it made to them in para 295 and their exports should be allowed if they fulfil the terms of that para. (Ibid.). However, the Court held that the doctrine of promissory estoppel could not be invoked because of two important factors, namely:-

(1) the export policy and consequently the guidelines were changed in public interest *(Ibid. at P.456),* and

(2) the representation contained in para 295 on 'preban Commitments' was subjected to the condition that the guidelines can be changed if there is a change in the policy. *(Ibid. at P.457).*

Para 295 itself announced that the guidelines mentioned there 'shall not confer any right on the person concerned to the grant of any export licence or permission to export', so there is no representation on which a right can be founded. *(Ibid.)*

Courts have held that 'estoppel cannot be allowed to hinder the formation of

the Government policy even if the citizen is a victim of a change of policy', Per Lawton, L.J., *Laker Airways Ltd. v. Department of Trade, (1977)2 All E.R. 192,* see also *Ramchand Jagadish Chand v. Union of India, (1962)2 S.C.J. 189 : (1962)3 S.C.R. 72 : A.I.R. 1963 S.C. 563.* The Government cannot be estopped from exercising its powers when it is doing so in the proper exercise of its duty to act for public good even though it may work some injustice or unfairness to a private individual. *(Ibid per Lord Denning at P.194).*

CONCLUSION:

With the advent of welfare state, the functions of government are rapidly expanding and even intruding upon individual rights and liberties. The Courts have sought to restrain the exercise of executive power by applying the principle of Promissory Estoppel as an extension of rule of law. The Courts have recognised certain exceptions against the doctrine namely public interest and that there can be no estoppel against a statute.

It is too early to predict the future of Promissory Estoppel. In the words of Lord Halisham it is a child of equity. It is still a delicate child with an uncertain future but it is beginning to take the shape of manhood. Promissory estoppel is the tool fashioned by the Judges for preventing injustice. Maitland calls it a product of 'legal smithy', while Lord Denning calls it the work of 'bold spirits'. It can safely be predicted that the doctrine has good prospects for a long and happy voyage and only the 'timorous souls' (to use Lord Denning's phrase) are likely to question its seaworthiness.

****

A LAPSE IN THE SUPREME COURT.

By

A.Rajendra Prasad, B.A. LL.M., Lecturer in Law, Nyaya Vidya Parishad Law College, Visakhapatnam - 530 019 (A.P.)

"Hard cases may make bad law". The decision of the Supreme Court in *Life Insurance Corporation v. Raja Vasireddy Komalavalli Kamba and others, (1984)2 S.C.C.719 : (1984) A.C.J. 345 : A.I.R.1984 S.C.1014*, may be looked at in this connection. The Supreme Court seems to have fettered itself behind the dry bones of law ignoring "S*"Salus populi est suprema Lex"* (Public Welfare is the highest law).

The insured R died intestate on 12th January, 1961. He had submitted a proposal for insurance for Rs.50,000/-. The deceased had issued two cheques for Rs.300/- and Rs.220/- respectively towards the first premium. The first cheque for Rs.300/ was encashed by LIC., on 29th December, 1960. The second cheque for Rs.220/- was dishonoured three times and finally encashed on 11th January, 1961. The Assistant Divisional Manager sent the proposal form to the Divisional Manager with his recommendation that "it may be accepted. Meanwhile, R died on 12th January, 1961 before the approval of the proposal by the Divisional Manager. The Supreme Court held that there was no contract between R and the Life Insurance Corporation on the simple ground that though recommended by the Assistant Divisional Manager, it was not accepted by the Divisional Manager.

The "law" on which the Supreme Court relied is not very convincing.

The law on Insurance not only governs the rights of the insured but also the benefits of the dependants. If a person takes out a policy, his family need not depend on the charity of their relatives or the Government. If he survives the period, the insured amount will be useful in his old age and period of disablement. Huebner observed "Life Insurance is a husband's privilege, a wife's right and a child's claim. This view supports to call this branch of law as a piece of "social legislation". The State had a similar intention while enacting the law as contained in Article 41 of the Constitution which says "The State shall strive to provide public assistance in cases of unemployment, old age, sickness and disablement". Epicuras, the great philosopher, rightly observed "....(But if we cannot conquer death, let us at least overcome the fear of death". *(Henry Thomas and Dana Lee Thomas, "Living Biographies of Great Philosophers". P.46)*. It is in this spirit the law of Insurance is made and the legislature aimed at avoiding this fear not only in the mind of the insured but also in the hearts of his dependants. The Supreme Court should consider this reality of human life and the philosophy of the legislature while interpreting the insurance law as a piece of "Social Justice".

The Supreme Court held that there was no final contract as it was not accepted by the competent authority. Acceptance to be final, according to Sec.7 pf the Indian Contract Act, must be unconditional and must be communicated to offeror. In the words of Lindley L.J., "Unquestionably, as a general proposition, when an offer is made, it is necessary in order to make a binding contract, not only that it should be accepted, but that acceptance should be notified". *Carlill v. Carbolic Smoke Ball Company, (1893)1 Q.B.256.* This principle was strictly applied in the later case *Powell v. Lee, (1908)99 L.T. 284*. It is undesirable to tie up the insurance law with the iron rope of Contract Law. In the present case, the Divisional Manager was the competent authority to accept the proposal. According to the Life Insurance Corporation of India Standing Order, 1960 (Financial Power), the Divisional Manager is the competent person to accept the proposal, if the sum exceeds Rs.50,000/-. The Assistant Divisional Manager sent the proposal with his recommendation that "it may be accepted". It meant, the proposal had satisfied all the requirements of Insurance Law except the technical approval of the Divisional Manager. Suppose, the Divisional Manager had accepted the proposal and not communicated it

to the insured, is it not unreasonable to say, "there is no contract as it was not communicated". Even though it is bare essential to form a contract, the communication itself is not necessary when the consideration is accepted and appropriated for that purpose as it was held in *Hindustan Co-operative Insurance Society Limited v. Shyam Sunder and others, A.I.R. 1952 Cal.691.*

The LIC contended that the cheques received were not encashed but only credited towards the suspense account of the Company. It is unfair to say "let the insured beware of the internal regulations." Life Insurance Corporation is a legal person as it is created by a Statute. The insured need not know how the moneys paid towards premian are dealt with by the Life Insurance Corporation. The insured need not enquire whether his moneys for premium are credited to one account or the other. The Doctrine of Indoor Management may be imported into the Insurance Law to uphold the object of social welfare. Life Insurance is based on co-operative principle. Larger the number, larger the benefits. It should not have stringent or rigid rules to shake the minds of the people who want to seek its shelter. The present practice of asking them to be aware of the internal practice is not an inducement and encouragement to the illiterates to take protection under its shade. It has been observed, "the proposals for illiterates' lives are not encouraged by the Life Insurance Companies in India, *Prof. K.S.N.Murthy, "Modern Law of Insurance in India, p.101.*

The House of Lords in the case of *Beresford v. Royal Insurance Company, (1935) A.C. 586,* rightly observed that the rigid rules of Contract Law applicable to individual contracts *inter se* should not be blindly imposed on the law of insurance. In that case, the insured paid the premiums for 9 years. It was provided in the policy that after one year, even if the insured committed suicide, he would be entitled to the insured amount. The insured committed suicide after nine years. But still the Court held that the representatives are not entitled to collect the insured amount even though they would be so entitled under the letter of the contract basing its decision on public policy. The strict principles of Contract Law should not change the avowed object of Insurance Law by taking away the substratum of the policy of Insurance.

It was held by the Supreme Court that the mere acceptance of the premium does not amount to acceptance of the proposal. Mere delay in giving acceptance cannot be construed as acceptance. The Supreme Court relied on Corpus Juris Secundum:- "The mere receipt and retention of premium until after the death of the applicant does not give rise to a contract, although the circumstances may be such that approval could be inferred from retention of the premium." (Vol.XLIV p.986).

In the realm of public contracts, in particular insurance contracts, the rule that silence cannot amount to contract should operate in the interest of social welfare and also because of the inequalities in the strength of the parties to the contract. It is unreasonable to presume that a public institution such as Life Insurance Corporation which covers the risk of human lives, has no duty to speak.

The case law covered by Ivamy in his book, General Principles of Insurance Law brings into focus the implications of acceptance of premium. E.R.Hardy Iwamy, "General Principles of Insurance Law" p.120, "Where no policy has been issued to the proposer before the loss, the receipt of the premium and its retention by the insurer, though by no means conclusive, may raise the presumption, in the absence of any circumstance leading to a contrary conclusion, that the insurers have definitely accepted the proposal." This view was affirmed in *Mc Elory v. London Assurance Corporation, (1897)24 R (Ct. of Sess.) 287, 291,* by Lord Maclaren. He observed "The Company is not bound to deliver a policy, without the payment of premium. If they accept a premium before deliverying a policy, I should be disposed to hold that the acceptance of the premium and the delivery of the receipt therefor was sufficient to

create obligation to issue a policy".

In *Canning v. Farquhar, (1866) Q.B.D.727,* Lord Esher observed, "If the premium is offered and accepted, there is at once an insurance". Lord Boyle held in *Christie v. North British Insurance Company, (1825) 3 Shaw (Ct. of Sess.)519,* "If the premium in this case had been agreed on, the insurance would have been effected, although no policy was delivered."

The act of the Life Insurance Corporation to keep the cheque with it would lead to an irresistible inference of the acceptance of the contract and, in turn, attracts the liability of the Life Insurance Corporation to pay the insured amount.

It is stated, the Supreme Court has been acting as a watchdog to safeguard the interest of the members in the society to reach the moon of social justice. To illustrate, it has liberalised the rules of *'locus standi'* for public interest litigation. This new idea of *locus standi* was an inevitable consequence of Justice Krishna Iyer's own perception of the role of Justices as Constitutional Invigilators and social reformers so as to bring 'rule of law' closer to 'rule of life', (1983) 10 I.B.R. 687. The Supreme Court's broad and bold interpretation should not be confined to public interest litigation only, but it should be extended to public interest legislative interpretation in branches such as Insurance Law and hold that acceptance of the premium *per se* imposes liability on the L.I.C., especially when the rule in insurance law is that the risk does not attach until the payment of the first premium.

CONCLUSION:

Insurance Law should not be under the roof of the Law of Contracts even though the latter is the root of it. The need of this hour requires the Supreme Court to interpret the Insurance Law liberally to sanction 'Maximum benefits with minimum pains from Law'. The pen of the judge should move with the minds of the parties to be affected by its stroke. Prof. Gray rightly observed, "The Courts put life into the dead words of the statute", Salmond, Jurisprudence, 12th Edn. p. 37. It should open the gates of Law to find a place for new principles in the field of Insurance.

****

COSTS

By

G.Ramamurthi, B.Sc., B.L., Advocate, Mannargudi.

In *M.Karunanidhi v. H.V.Hande, (1984)1 M.L.J.(S.C.)1 : (1983)2 S.C.J. 94 : (1983)2 S.C.C.473,* the Supreme Court dismissed the appeals. Nobody can quarrel with the decision on merits. But in para 44 of the reported case, it is stated "The costs throughout shall be borne by the parties as incurred". Why was the successful party deprived of his costs? Why should the unsuccessful party have the satisfaction of dragging the other party to Court and then have the added satisfaction of making the successful party to bear his own costs? In other words, is the discretion of Courts regarding award of costs unfettered as per Sec.35, C.P.C.?

Sec.35, C.P.C., reads as follows:-

Sec. 35(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar in the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

It is commonly observed in all reported decisions a last sentence is added as "there will be no order as to costs",

"the parties shall bear their costs throughout", etc.

I submit that in the matter of awarding or refusing to award costs, Secs.35(1) and 35(2) must be read together. Court's discretion in this regard must be judicial discretion and not disposal by a single line or wording. The Corurt has to apply its mind and give its reasoning if costs are disallowed to a successful party.

The Madras High Court in *Sri Bharat Traders by partners v. S.R.Viswanathan, (1983)2 M.L.J. 1 : 96 L.W. 113*, has correctly laid down the dictum that the costs must normally follow the event. But the further statement that "costs in the lis shall be in the discretion of Court and when it is so exercised, appellate Court shall not interfere" may require further consideration.

It is not the award of costs that is discretionary since it is automatic. It is only the non-award of costs which is discretionary and the same is to be exercised for reasons to be recorded in writing. If it is not so exercised, then the appellate Court shall interfere. In other words, award of costs is mandatory; but if the Court feels that there are extenuating circumstances which prevent the Court from granting costs, then only the Court shall state the reasons for the same and disallow costs.

One other aspect is that the appellate Court can decide on award or non-award of costs only regarding the proceeding before that Court. Unless, the award of costs was made a specific ground, the appellate Court has no power to declare that parties shall bear their own costs even in lower Courts. That is why Sec.35(1) starts by saying "subject to such limitations ....".

Sec.35(2) contains the said limitation.

Even from the point of view of litigant public, if Courts are liberal in refusing to award costs to the successful litigants, then it may amount to denial of justice especially since what is actually awarded as costs itself is infinitesimal compared to what the litigants spend.

****

NEED TO MAKE AGREEMENT OF SALE OF IMMOVABLE PROPERTY COMPULSORILY REGISTRABLE.

By

M.A.Khapali, Advocate, Thiruvallur.

Agreement to convey immovable property is not compulsorily registrable under Sec.17 of the Registration Act, as it stands now, on the ground that such a transaction does not create or transfer any interest in immovable property.

However, there is compelling need to make such agreements compulsorily registrable:

(i) to protect persons who have *bona fide* paid the money either in pursuance of the agreement of sale or completed sale transaction;

(ii) to curb frivolous civil litigation and;

(iii) to augment Government's financial resources.

Invariably, suits for specific performance relating to immovable property involve the owner, the agreement-holder and the subsequent purchaser. In some cases, the owner and the competing purchaser collude to defeat the right of the purchaser under registered sale deed by creating antedated agreements and in some cases, it is the unholy combination of the original owner and purchaser when the agreement-holder is not put in possession and, there are also instances where the owner makes money at the expense of both. Thus, it is seen that in all these instances either the agreement-holder or purchaser or both are put to peril. The safeguard under Sec.19(b) of the Specific Relief Act is for the benefit of the subsequent purchaser and where possession is not delivered the position of the agreement-holder is precarious and even where possession is given, the onus on the subsequent purchaser is minimal as proof being negative in character. By amending Sec.17 of the Registration Act to take in within its ambit, agreement of sale of immovable property of value

over Rs.100/-, the malady can be cured.

Next as a direct result of this, frivolous and collusive suits which contribute to civil litigation in no small measure, will be eliminated.

Lastly, once agreements for sale of immovable property are brought within the purview of Sec.17 of the Registration Act, it will mean more revenue to the exchequer by way of stamp and registration charges. Here, the Government should keep the charges at a low level and avoid the temptation of heavy dose of levy as, even as it is, stamp and registration charges are steep. The stamp duty should not exceed 1/2% of the value of the transaction subject to a minimum of Rs.25/- and the registration charges should be at the flat rate of Rs.25/- per transaction. Suitable amendments have to be made in Schedule 1 and Article 5 of the Stamp Act also.

It is hoped that the Union Law Ministry will bestow serious thought on this in the interest of the public, to curb litigation and to augment its resources.

****

NEED TO CURTAIL JURISDICTION OF CIVIL COURTS.

By

T.S.Krishnamoorthy, B.Sc., B.L., P.G.D., Advocate, Coimbatore.

The jurisdiction of Civil Courts in respect of matters covered by self-contained special enactments must be taken away. Such jurisdiction of the Courts constituted under the Civil Procedure Code must be strictly confined to cases arising under the common or general law. The special enactments, for instance, covering the company law and industrial law are Central Acts making exhaustive provisions for regulating the affairs of the institutions and persons coming within the purview of those Acts and also providing for adjudication of disputes arising under the same.

The well-known principles in relation to jurisdiction of Civil Courts were stated by Mulla in his work on the Code of Civil Procedure and affirmed by the Supreme Court in *Premier Automobiles Ltd. v. K.S.Wadke of Bombay, (1976)1 S.C.C.496 : (1976)1 S.C.R.427 : A.I.R.1975 S.C.2238*. They are that where a statute creates a new right not existing at common law and specifies a particular mode in which it is to be enforced, that bars the jurisdiction of Civil Courts. However, and this is where the rub is, they could examine cases where the provisions of the special statutes are not complied with or where the statutory tribunals have not acted in conformity with the fundamental principles of judicial procedure or of natural justice or where their decisions amount to abuse of power.

Now, forensic ingenuity has found ways to bring a case that would otherwise be covered by the provisions of special enactments within the ambit of the general law by pleading facts, which on proper examination, would be found to be not strictly or even predominantly concerned with the general law. The vesting of jurisdiction in Civil Courts with power to decide questions arising under the special branches of law and issue orders including *ex parte* orders of injunction in respect of matters coming under those laws is causing great hardship not only to the affected litigants, but to the public as well, and has, more often than not, helped the none-too-scrupulous plaintiffs who have not hesitated to use the time-consuming process of civil Courts with its appeals, second appeals, revisions and reviews interspersed with bureaucratic delays in obtaining copies and complying with any number of procedural details, delaying the course of justice and keep it at bay.

It should be noted that a Civil Court is invested with large powers to decide all questions of civil nature and pass final orders and decrees. One of its most potent powers is that it can grant to the plaintiff orders of injunction restraining the defendant who may be a person, firm or any legal entity from any act after hearing the parties to

the suit and can also grant such orders *ex parte* till notice to the defendant, which, as a matter of practice, the Court has not been reluctant to do. This power has been thoughtfully it would seem, prohibited against Government and public officers. When, such *ex parte* orders of injunction are passed by Civil Courts, with their concomitant power to punish for contempt, on the eve of the happening of the event complained of, the plaintiff effectively achieves his purpose.

In practical experience we find that not infrequently practices are resorted to that seriously hamper the administration of justice. To cite an example, a losing director of a company incorporated under the Companies Act and having many branches in India may himself or through an obliging shareholder stall its proceedings and meetings by an *ex parte* order of injunction obtained on the eve of the same from a District Munsif Court, a Civil Court of the lowest grade, situated not necessarily at the place where the proceeding or meeting is conducted. The consequential hardship to all those concerned with the management of the company affairs and its innumerable shareholders can be easily imagined. It would be legally artless to argue that in such a case as the one mentioned above the Court is presumed to know the full and true facts when it issued the order of injunction or that its order must have been just. In many cases, long after the event, when the matter is agitated in the High Court, the order is found to be erroneous and that is not going to be any consolation to the persons affected, directly or indirectly, by the order. Examples can be multiplied of suits, with interlocutory applications for *ex parte* orders to restrain Board Meetings, appointment and removal of directors, auditors and officers of the company, and to interfere with the internal management of the company.

Similarly, suits in respect of matters covered by the industrial law, particularly by the Industrial Disputes Act, are becoming numerous generally by the accused workmen and others coming under the purview of the said Act who are proceeded against by way of disciplinary proceedings for misconduct. They allege vague grounds of *mala fides*, violation of principles of natural justice, abuse of power etc., in the suit and get an order of injunction from the Civil Court paralysing the course of administrative and adjudicatory procedure provided by that Act. A lucky delinquent may gain many years by the time the tedious process of Civil Justice achieves finality. Then, a new plea of long delay in prosecution has not been found to be ineffective to him. Other cases of suits in respect of transfers, promotions and seniority of workmen and other allied matters and rights of trade unions are only some examples.

The above is not the case only when the order of the Civil Court is found to be unsustainable. Even, if the order is ultimately upheld it has often been found to cause more harm than good for the process of justice envisaged by the special laws. The Civil Court's intervention has only helped to hamstring the smooth running of the company and create confusion in the observance of various statutory and other duties imposed by law, and generally undermine discipline and respect for authority and law. And the *modus operandi* described above of abusing the power of the Civil Court can be repeated, and often is, by the frustrated but enterprising plaintiff launching another round of litigation when the previous one has come to an end.

As already stated, these special laws have in-built adjudicatory forums and tribunals with their hierarchy and powers elaborately and carefully outlined in the respective Acts. The authorities clothed with the powers to try questions arising under those Acts are qualified persons having knowledge and information in the field they are required to serve. In fact, where judicial officers coming under the State judiciary are notified to serve as such authorities they are generally of the cadre of the District Judge. There is no reason why we should attribute to the authorities appointed

under the special laws lesser wisdom than possessed by the District Munsifs or even Subordinate Judges of the regular judiciary. It may be stated, without meaning disrespect to the judicial officers, that in assuming jurisdiction under the distinctive self-contained laws covering special fields and relationships, they may be performing their duty ill-informed or not informed at all. To be honest, the quality of the subordinate judiciary in our country is not exactly at its zenith. The reasons are not far to seek considering that the emoluments of and amenities to the subordinate judicial officers bear no relation to the responsibility, importance and volume of their work. And it would be naive to contend that extraneous and extra-judicial considerations do not play any part in their appointments.

It is true that judicial or quasi-judicial authorities created by the special Acts may not be invested with all the powers of a Civil Court. For instance, it is said that the tribunals or other judicial forums functioning under the special enactments have no power to grant injunctions. It is because the Legislature in its wisdom intended it should be so. Further, such power, we have seen, only hampers and does not advance justice as conceived by these laws.

The Supreme Court has asserted in the case first cited that the power of the Civil Court to grant injunction is an incidental power flowing from its main power to decide the principal question raised in the suit which must be of civil nature. If it is not, the Civil Court's jurisdiction is barred and it is barred for all purposes including that of granting injunction. But, the Court pointed out, where the tribunal acts *mala fide* or without jurisdiction or the issue raised before it, though mainly possessed of the characteristics giving jurisdiction to the tribunal, is one that also involves examination of some right created under the common law, then the Civil Court is not precluded from trying such an issue by way of a suit. It is this position of law recognised by the Supreme Court that is sought to be wrongly used. The remedy is to totally abolish the Civil Courts' jurisdiction in respect of all matters regulated by the special laws like the company law and the industrial law notwithstanding the fact that the matter also involves decision regarding a question arising under the common law or general law so long as the matter is one that is governed or regulated by the special Acts and intended by the Legislature to be so governed or regulated.

The views expressed above are not '*argumentum ad horrendum*' but they, it is humbly felt, reflect reality, and the situation is not without urgency. In fact, Uttar Pradesh, in 1976, made some salutary amendments to Order 39, Rule 2 of the Civil Procedure Code relating to the power of the Civil Courts to grant injunctions prohibiting them in respect of administrative orders and disciplinary proceedings against employees, internal management of educational institutions and universities, elections and a few other matters. But, a permanent measure by way of legislative amendment of the Code of Civil Procedure with a view to curtailing the jurisdiction of the Civil Courts in respect of matters wholly or mainly arising under self-contained, self-regulatory special enactments is necessary.

As a preliminary measure, the above reform may be implemented early in respect of all matters concerned with company and industrial law. Law must mould itself to meet the changing circumstances and with the ever-expanding corporate and industrial sectors closely affecting and influencing society and, therefore, the nation, a change in the law as indicated above is warranted and when it comes it will not be too soon.

****

BOOK REVIEW

1. MODERN HINDU LAW *by Ramesh Chandra Nagpal*, First Edition. (Published by Eastern Book Company, Law Publishers and Booksellers, Lucknow-226 001) 1983. Price Rs.120/-

Modern Hindu Law consists partly of codified law and partly of principles developed over the centuries from texts of the Hindu Dharmasastras and Customs. While Hindu Laws relating to marriage, adoption, maintenance, minority and guardianship and succession have been codified, the uncodified part covers topics like joint family, debts, partition, benami transactions, religious endowments etc. Codified or uncodified, the law cannot be understood except in the light of its historical development. An enormous amount of case law in relation to both the branches has also accumulated. As pointed out in the Preface, Courts and Lawyers cannot any longer concern themselves with a bare analysis of the law as it exists. They have at times to play a creative role in the construction of the law. This needs an understanding of its development in the past, functioning in the present and trends in the future. The codified part of the law is studied in the form of sectionwise commentaries. There is a luminous presentation of principles in regard to topics outside this Part. Two striking features in the Author's exposition are: firstly, it gives references to the ancient Sanskrit texts with English translation thereof; secondly, the Author has not hesitated to state his own views. He rightly protests against statements even in standard books of high repute being taken as laying down the law without an independent scrutiny by the Court of the concerned material (for an instance see p.46). The book gives an exhaustive coverage of the entire subject in 15 Chapters. There are 11 Appendices setting out the texts of The Caste Disabilities Removal Act, 1850, The Hindu Widow's Remarriage Act, 1856 (1854 at p. xiii is a mistake); The Anand Marriage Act, 1909; The Hindu Disposition of Property Act, 1916; The Hindu Inheritance (Removal of Disabilities Act, 1928; The Child Marriage Restraint Act, 1929; The Hindu Gains of Learning Act, 1930; The Arya Marriage Validation Act, 1937; The Dowry Prohibition Act, 1961; and Extracts from the Indian Penal Code and the Criminal Procedure Code, respectively.

The book under notice reflects a scholarly, analytical and meaningful study by the Author. It will serve as a dependable and valuable guide to students, lawyers, Judges and others interested in Hindu Law.

------

2. THE LAW OF CENTRAL EXCISE *by V.J. Taraporevala* and *S.N.Parik*, Second Edition, 1983 (Published by N.M.Tripathi Private Limited, Bombay) Price Rs.220/-

Excise is still the most lucrative tax of the Central Government, the most fruitful single source of revenue. The primary and fundamental meaning of excise is that it is a tax on manufactured articles. The Central Excises and Salt Act, 1944, governing the subject has by its very nature an impact on every citizen, since he is whether he is aware of it or not, contributing to the collection of tax under the Act. There are only 40 sections in the Act. Yet the First Schedule listing various items subjected to excise is constantly expanding, a process starting in 1934 and in 1975 the residuary Item 68 was introduced and practically all manufactured goods which are marketable are brought into the net. There are also about 240 Rules.

The book under notice has undertaken an immense task in bringing together a vast mass of information concerning the Act, the Rules, Table of Taxes etc. The material is presented in the form of section-wise commentaries. The commentaries on the Rules and the Schedule are very helpful conducing to understanding of the fiscal web covering this field. The statement of law under the sections is in the light of case law cited in the footnotes. There are 14 Annexures.
These are (1) The Central Excise and Salt Act, 1944; (2) Central Excise Forms; (3) Central Excises and Salt Act as origi-

nally enacted; (4) Appointment of Appellate Tribunal; (5) Customs, Central Excise and Gold (Control) Removal of Difficulties Order, 1982; (6) The Provincial Collection of Taxes Act; (7) Sections 30, 31 and 32 of the Finance Act, 1982; (8) The Additional Duties of Excise (Goods of Special Importance) Act, 1957; (9) The Economic Offences (In application of Limitation) Act, 1974; (10) The Central Excise Laws (Amendment and Validation) Act, 1982; (11) New Rules; (12) Customs, Excise and Gold Appellate Tribunal (Control) Procedure Rules; (13) Section 43B of the Income-tax Act, 1961; and (14) Special Duties of Excise.

That within four years of the first edition, a second edition has been placed before the public testifies to the excellence of the work and its appeal to the legal profession, the commercial community and the excise administration. The book is complete in every respect and one be he a lawyer or taxing authority, need not look elsewhere for guidance or information.

------

3. RIGHTS OF MINORITY SHAREHOLDERS *by S.K.Dholakia*, First Edition, 1983. (Published by N.M.Tripathi Private Limited, Bombay). Price Rs.85/-

It is familiar knowledge that the corporate sector as a medium for industrial development is playing an important role at the present time. The voice of the small shareholder in companies not properly managed however remains very often inarticulate. The book under notice deals with the rights and remedies available under the Companies Act, 1956 to the small shareholder in the case of a company which is mismanaged. There is no doubt that a proper understanding of the remedies available to him and their effectiveness in regard to the ventilating of his grievances are needed for the healthy growth of companies. The book under notice has brought together for the first time all the relevant materials pertaining to minority shareholders. The book is divided into two parts. Part I sketches the historical background of how shareholders could obtain relief in the case of mismanaged companies before statutes made provisions, for instance under Common Law. The provisions of Sections 397 to 409 of the Comapnies Act, 1956 are elucidated and the relevant case law has been taken into account. The second Part provides extracts from important judgments not ordinarily available in the standard law reports. There is also an Appendix containing extracts from connected statutes, rules, circulars etc.

The book is sure to be of much assistance to lawyers, investors and corporate sector officers.

------

4. CRIMINOLOGY: PROBLEMS AND PERSPECTIVES BY *Ahmed Siddique*. Second Edition, 1983. (Published by Eastern Book Company, Law Publishers and Booksellers, Lucknow-226 001). Price Rs.50/-

Criminology is a fundamental science an adequate knowledge of which is a "must" to enable one to apprehend thoroughly the concept of crimes and criminals, punishment, sentencing process, administration of criminal justice etc. Criminalogy is now in the curricula of studies in many Universities for the degrees in Law and Sociology. A satisfactory theory of crime is yet to be formulated. Nor is there any agreed theory as to punishment. In spite of different criticisms in regard to it Stephen's definition of crime as "an act which is forbidden by law and revolting to the moral sentiments of society" has much to commend it. Likewise it is easy to agree with the motto of the Japanese Penal Code that the aim of punishment is to end all punishments. Various theories as to these matters have been propounded and there are many works in the field both by foreign as well as Indian Authors each projecting his own views on the several facets of criminology. Furthermore advances in research open new vistas. The present work has made a critical examination of the different theories giving each its proper weight and with particular reference to the conditions of Indian life, the Indian Criminals and the Indian

Criminal Courts. It has been the author's endeavour to present a broad comprehensive view of criminology rather than dealing intensively with any particular factor segment. The study runs into 16 Chapters. The first six Chapters present the different approaches to crime, criminals and punishment. The remaining chapters are devoted to matters like Juvenile Institution, the Police, Administration of Criminal Law, the Sentencing Process, White Collar Crime, Sex Offences, Alcoholism and Drug Abuse. There are two Appendices giving respectively the Children Act, 1960 and the Probation of Offenders Act, 1958.

The Author has dealt with the subject in a comprehensive manner, defining issues and presenting an overall picture emerging out of them giving wherever feasible figures and statistics providing his own views on debatable issues. The book is written in an attractive style and will prove to be a welcome addition to the literature on the subject.

------

5. EQUITY, TRUSTS, SPECIFIC RELIEF *by Durga Das Basu*, Fifth Edition, 1983. (Published by Prentice Hall of India Private Ltd., New Delhi) Price Rs.39/-.

Equity is unenacted law and forms, as it were, the fountain source of all laws. The principles of Equity were developed in England over the centuries by the Chancery Courts exercising jurisdiction to moderate the rigour of common Law and to provide relief not available at common Law in the interests of Justice and fair play. In India the Courts administer law and equity and there is no dichotomy of jurisdiction. The English principles of equity have permeated the Indian Statute law as well. Even in codified law equitable principles influence interpretation. Outside such law, in the absence of any statutory provision applicable to any matter principles of equity are invoked so long as they are consistent with the general principles of justice and the policy of the law. In dealing with problems in Contracts, Property Law, Trusts, Mortgages, Specific Relief etc. principles of equity have been drafted in to find just solutions. There are not many books by Indian Authors presenting a study in depth of Equity, for instance like Snell's book. The book under notice has in some measure supplied the need. It compares and contrasts the English principles of equity with the statutory and case law in India under the several topics of law mentioned above. The book would serve as a helpful guide to the Bench and the Bar alike in this country and beyond wherever the legal system is organised on the British model.

------

6. LAWS OF MARRIAGE AND DIVORCE *by H.K.Saharay*, Second Edition, 1984 (Published by Eastern Law House Private Limited, Calcutta-700 013).

Nowhere has the wheel turned a full circle as in regard to the institution of marriage - from group alliances to marriage between individuals, from polyandry and polygamy to monogamy, from sacrament to contract, from indissolubility to dissolution at will. The evolution presents a fascinating study. To the people at large and practising lawyers the prevalent law is much more relevant. The theoretical aspect of the subject does not touch them as much as its practical side. The book under notice seeks to cater to both these aspects and to provide solutions to problems which lawyers have to deal with. The book sets out the laws of marriage and divorce governing people of different religious faiths at the present time, the concerned statutes and rules made thereunder. It is divided into 8 parts. Part I traces the origin of marriage and divorce in the different countries of the World like Rome, the U.S.A., the U.S.S.R., France, Germany, China, Japan, African Republics and Great Britain. Part II deals with the Hindu Marriage and Divorce Law both before and under the Hindu Marriage Act. Part III is devoted to the Special Marriage Law spotlighting the Special Marriage Act, 1954. Part IV is concerned with the Indian Divorce Act, 1869 and the Indian Christian Marriage Act, 1872. Part V presents the Foreign

Marriage Act, 1969. Part VI covers Muslim Marriage and Divorce Laws including the Dissolution of Muslim Marriages Act, 1939. Part VII deals with Parsi Marriage and Divorce Law and the Parsi Marriage Act, 1936. Part VIII contains 5 Appendices. Appendix 1 sets out the Hindu Marriage Act, High Court Rules and Special Marriages (Diplomatic and Consular Officers) Rules. Appendix 2 gives the Registration of Marriage Rules framed by the different States. Appendix 3 furnishes the Foreign Marriages Rules and Appendix 4 the Parsi Marriage and Divorce Act Bombay High Court Rules. Appendix 5 provides Model Forms, Petitions and Defences. In the present edition (second edition) a note on the Recommendations of the Joint Committee regarding the Marriage Laws (Amendment) Bill, 1981 is given (see pp. 215-217) and a new Chapter on the Dowry Prohibition Act, 1961, with State amendments is also incorporated (see p.530 *et seq).* The author has provided notes under each statutory provision which are lucid and helpful. Case law up to date has been noticed We heartily commend the book to the members of the Bar as well as to law students.

7.PRINCIPLES AND FORMS OF PLEADING *by S.C.Ghosh,* Fourth Edition, 1984. (Published by Eastern Law House, Calcutta) Price Rs.175/- : £ 14 : $ 28.

The object of Pleadings is to bring the parties to the litigation to an issue, to enable them to know what the real point to be discussed and decided at the trial is. The object of Pleading is not to keep the opponent guessing. The drafting of Pleadings is an art. A good pleading should be concise at the same time comprehensive, precise and unambiguous, relevant not rambling. The Rules of pleading are contained in the Civil Procedure Code and the Original Side Rules of the High Courts. The book is divided into 4 parts. Part I discusses lucidly the history of Pleadings in India and Britain with reference to ancient Hindu and Muslim periods. This Part contains five chapters devoted respectively to Pleadings during the Hindu period, Pleadings during the Mahomedan period, Pleadings during the British Indian period upto 1908, System of Pleading in England and System of Pleading in India. Part II deals with the Principles of Pleading elaborating them with special stress on parties, causes of action, jurisdiction etc. The whole spectrum including subjects like special defences, set off, counter claims, interrogatories, amendment of pleadings, third party procedure, striking out, verification of pleadings etc. is covered. Part III gives Forms of Petitions and Applications. A good number of Forms of Petitions and Plaints used by lawyers in their day to day work have been incorporated. Part IV provides Forms of Pleadings. The Forms of Plaints and Written statements are arranged alphabetically with foot notes giving the supporting case law thereon. All the Supreme Court and other relevant English and Indian decisions have been considered.

The book has been compiled with skill and learning. It will serve well the members of the legal profession, young and old, beginners as well experienced practitioners. It will prove a valuable guide for every day reference.

------

8. GANGULY'S CRIMINAL COURT PRACTICE AND PROCEDURE, Eighth Edition *by M.N.Das,* 1984. (Published by Eastern Law House Private Ltd., 54, Ganesh Chunder Avenue, Calcutta-700 013). Price Rs.120/-

Practice in the wider sense "denotes the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the rights, and which by means of the proceeding the Court is to administer the machinery as distinguished from the produce" [*Lever Brothers Ltd. v. Kneale and Bagnall,* (1937) 2 K.B. 87]. Procedure connotes a particular way of accomplishing something, a series of steps followed in a regular definite order. Procedural law provides the working machinery for enforcement of the substantive law. In matters

criminal while the Indian Penal Code provides the substantive law, the Criminal Procedure Code provides the procedural principles. The Procedure Code was extensively amended in 1973, and since then has been further amended by the Criminal Procedure Code (Amendment) Act of 1978 and 1980.

Apart from an Introduction containing a General Outline of the subject, the law is set out in 9 parts. Part I covers the Criminal Procedure Code principles, Part II the Indian Penal Code and Part III the Evidence Act, Part IV is devoted the Medico-Legal Jurisprudence, Part V provides Hints on Advocacy in Criminal Trials, Part VI deals with Important Words and Phrases. Part VII furnishes Models of Petitions and Affidavits and Part VIII refers to Miscellaneous matters, Part IX is an Appendix containing the Criminal Procedure Code (Amendment) Acts of 1978 and 1980, the Essential Commodities Act, 1955, the Prevention of Corruption Act, 1947; the Special Courts Act, 1979; the Probation of Offenders Act, 1958; and the Economic Offences (Inapplicability of Limitation) Act, 1974. The book under notice treats law principles and their practical application integrally so as to enable the practitioner in Criminal Courts to familiarise himself not only with the entire spectra of the Indian Penal Code the Criminal Procedure Code and the Indian Evidence Act but also with practical knowledge. The principles are neatly analysed and expounded lucidly taking note of decided case up to date. Prolixity is scrupulously eschewed. Superfluous materials in the earlier edition have been pruned away and the two Schedules of the Criminal Procedure Code have been accommodated. The book is a welcome publication and will be highly helpful to the members of the Bar.

------

9. CRIMINAL REFERENCE *by A.N.Saha*, Third Edition, 1984. (Published by Eastern Law House Private Limited, Calcutta-700 013). Price Rs.160/-.

This book endeavours to present the case law on statutory provisions which a criminal lawyer needs in his day to day work in a convenient form, by referring to which the busy practitioner can lay his finger on the relevant judicial decision with little effort. The scheme of the book is simple. In 31 segments, of which the first three deal with introductory information - Interpretation of Statutes, Constitutional Principles of Criminal Liability and General Principles of Criminal Prosecution - the rest are devoted to stating the case law under the provisions of various statutes like the Arms Act, Army Act, Child Marriage Restraint Act, COFEPOSA, Copyright Act, Criminal Law (Amendment) Act, Contempt of Courts Act, Criminal Procedure Code, Customs Act, Essential Commodities Act, Explosives Act, Explosive Substances Act, Factories Act, Foreigners Act, Identification of Prisoners Act, Indian Electricity Act, Indian Evidence Act, Motor Vehicles Act, Indian Penal Code, Prevention of Corruption Act, Prevention of Food Adulteration Act, Prohibition Law, Provincial Insolvency Act, Public Servants (Inquiries) Act, Railway Property (Unlawful Possession) Act, Special Marriage Act and Suppression of Immoral Traffic in Women and Girls Act. One could agree with the Author's hope that "mention of the sections on the folio headings and an exhaustive index prepared on cross-indexing method - would assist a busy lawyer in switching on the desired point immediately without groping in the motley case law digested." The book under notice is not a mere digest. The historical background is briefly touched upon and differences in judicial opinion are taken into account. The book is quite a helpful publication.

------

10. AMIN AND SASTRY'S LAW OF EASEMENTS, Fifth Edition, revised *by G.C. Mathur*, 1984. (Published by Eastern Book Company, 34, Lalbagh, Lucknow-226001). Price Rs.120/-.

This is a popular book on the Law of

Easements. It provides a section-wise commentary. The Easements Act is more than a century old having been enacted in 1882. First published in 1940, the book is now in its fifth edition. The Easements Act as such is in force only in specified States but its provisions are being invoked as principles of justice, equity and good conscience in other States also in finding solutions in disputes relating to easements. The Act is based on English law but has deviated from it wherever it was necessary in the light of conditions in this country. Though the Act is concerned essentially with easements and licences, ancillary and related topics like customary rights, public rights, irrigation, party walls, fisheries and ferries are also discussed.

The present edition has incorporated the leading decisions rendered since the last edition upto date making the exposition of law accurate and dependable. Re-arrangements of headings and sub-headings under the various sections has been made to enable the readers to locate the precise point he is looking for without much effort. There are 11 Appendices. Appendix I furnishes forms of some plaints in suits on easements. Appendices II to X contain extracts from the successive Limitation Acts, the Specific Relief Act, the Transfer of Property Act, the Civil Procedure Code, the Criminal Procedure Code and the Indian Penal Code having a bearing on the law of easements. Appendix XI sets out the Indian Easements Act, 1882.

The commentaries provided under each section are analytical and clear. The book will serve as a useful guide on the subject of easements to lawyers as well as to law students.

------

11. ADMINISTRATIVE LAW by *S.P.Sathe*, Fourth Edition, 1984 (Published by N.M.Tripathi Private Ltd., Bombay). Price Rs.50/-.

Administrative law is still an amorphous subject despite the rapid development of this branch of jurisprudence. The principal purpose of administrative law is to keep the powers of the Government within their legal bounds so as to protect the citizen against their abuse, to prevent the engine of authority from running amok. Administrative law covers at the present time a wide range of topics such as administrative authorities and administrative functions, Delegated legislation, Judicial Control over quasi-judicial tribunals and bodies Exercise of discretionary powers, Principles of Natural Justice, Adjudicative procedures the law of *locus standi* including public interest litigation. Administrative law is at present a subject for law degree examinations in a number of Universities. The book under notice endeavours to expound the principles of Administrative law as they have been moulded by Courts, legislatures, Government and its departments over the years, particularly after Independence which has pledged itself to make the country a welfare State. The Supreme Court has made a great contribution to the phenomenal growth of administrative law as suited to the Indian milieu. The book is designed to meet, the needs of the students. The book is divided into 11 Chapters. Chapter 1 provides an Introduction, Chapter 2 deals with the Legislative Powers of the Administration and Chapter 3 with Control of Delegated Legislation. Chapter 4 is devoted to the Duty to Hear and Classification of Administrative Action. Chapter 5 discusses Fair Hearing and Rules of Natural Justice. Chapter 6 surveys Judicial Review of Administrative Action and Chapter 7 Judicial Review of Administrative Discretion, Chapter 8 covers Reliefs and Remedies Against Administration and Chapter 9 Suits Against the Administration. Chapter 10 deals with Public Enterprises and Chapter 11 with Citizen's Grievances: Ombudsman. The Appendix sets out the Constitutional provisions regarding Remedies and Reliefs, namely Articles 32, 136, 226, 227, 358 and 359.

The book under review is broad in scope albeit brief. It shows a grasp of the purpose and perspectives of professional education. While expressing his own view the author does not hesitate to state that there might be other views also pertaining to the particular question. A pleasing feature of the exposition is its references

to French and Common Wealth law and the providing of summaries of the U.S. and English law relevant to the question. The author's presentation is both historical and critical and in easy style. The book can be read not only by lawyers and law students but also by political scientists and others. It contains a clear presentation of the principles of Administrative law.

------

12. A TREATISE ON TAX PLANNING by *D.D.Shah*, Third Edition, 1984. (Published by N.M.Tripathi Private Limited, Bombay). Price Rs.75/-.

It is sound law and certainly not bad morality, for anybody to so arrange his affairs as to reduce the brunt of taxation to a minimum. Tax-planning within the four corners of law is legitimate and permissible where it is genuine and not designed to conceal income from tax liability. The modern science of law reveals a marked shift from the analytical to the functional attitude. This trend is kept in mind by the author in indicating the various possibilities in judicious tax planning. Such planning is a continuous process. The sources of income may change from time to time. Every new acquisition of a source of income must be carefully examined from the planning point of view. It will have to be considered not only from its earning capacity but also as to whether it will give the greatest economic benefit to the tax payer and his family. The form of every new venture, be it proprietory partnership or corporate structure, must be investigated.

The book under notice is divided into seventeen Chapters:- Introduction, Statutory Restrictions on Tax Planning; Tax Planning for Salaried Employees; Tax Planning for Business; Statutory Provisions to check Legal Avoidance; Planning through Companies; Planning through Trusts; Planning through Partnership; Planning through Insurances, Planning through Will; Planning through Charities; Planning through Hindu Undivided Family; Specific Problems of Tax Planning for Estate Duty; General Legal Principles of Taxation; General Planning through Association; and Basic Legal Decisions. An Appendix provides some illustrations to understand only the salient principles discussed in the book.

In this edition the author has brought the material up to date in the light of the latest trends and developments in case law and statutory amendments. The book will prove very helpful to lawyers, accountants, businessmen, tax officials and tax payers. It is a must for the library of a tax expert.

------

13. WRIT JURISDICTION UNDER THE CONSTITUTION by *B.L.Hansaria*, 1984. (Published by N.M.Tripathi Private Limited, Bombay). Price Rs.90/-.

The Constitution has given the country an adjudicative body totally supreme in its sphere. The Supreme Court has become an important and meaningful tool in safeguarding the basic rights of the citizens. Judicial reviewability stands as a bulwark against assumption of dictatorial powers by the democratic organs of the State. The Supreme Court and the High Courts are doing a great job in upholding the Constitution and as custodian of the guaranteed rights. The approach to the Courts is via Articles 32 and 226 respectively which empower them to issue directions, orders and writs in the nature of *habeas corpus, mandamus, certiorari, quo warranto* and prohibition, Judicial Review is acquiring new dimensions through judicial activism expanding the concept of *locus standi* and public interest litigation.

The book under notice is mainly the revised version of the earlier edition on principles governing Article 226 published in 1968 which has been accorded a warm reception in the light of structural changes made in Article 226 by the Forty Second Amendment and the conceptual changes brought out subsequently. In this edition a discussion on Article 32 as well as Article 136 in so far as appeals from writ petitions are concerned has

been incorporated. Apart from this some new chapters have also been added. There are thirteen Chapters covering the exposition. Chapter I deals with Article 226 historically. Chapter II contains a General Discussion. Chapter III is devoted to *certiorari*, Chapter IV to Exercise of Discretionary Powers and Chapter V to *mala fide* use of power, Chapter VI covers Prohibition; Chapter VII *mandamus*, Chapter VIII *habeas corpus*, Chapter IX *quo warranto*. Chapter X discusses Article 226 during the period of Forty Second Amendment. Chapter XI is devoted to Articles 226 and 227, Chapter XII to Article 32 and Enforcement of Fundamental Rights and Chapter XIII to Article 136 and Scope of Interference. The Appendix sets out the Supreme Court Rules relating to applications under Art. 32.

As a result of the comprehensive revision the book has become more complete and more useful to the practising lawyers and Judges. The different topics are studied under appropriate headings and sub-headings. The exposition is balanced. The book is a welcome addition to the literature on the subject.

------

14. THE LAW OF EVIDENCE *by P.S.Atchuthen Pillai*, Third Edition, 1984. (Published by N.M.Tripathi Private Limited, Bombay). Price Rs.50/-.

The law of evidence is the basis of the rule of law in all civilised countries. It is verily the handmaid of justice both in civil and criminal matters. The Indian Evidence Act is more than a century old and even nowshowsfew signs of decrepitude. It is easy to subscribe to the author's statement in his preface that "the Judgments of the Supreme Court ... have greatly enlarged and illuminated the dimensions of the subject in its new perspective of the rights of the individuals as against (Government and Quasi-Government institutions". The conspicuous examples are the development in regard to promissory estoppel, the areas of confidential communications and privileged documents, official secrets etc. The book under notice has noticed all such changes and developments. The book treats the subject-matter topically bringing out all the relevant connected sections together and assessing their impact on one another in the course of the trial of both civil and criminal cases. The scope of appeals to the Supreme Court, particularly criminal appeals under Article 136 of the Constitution taking along with the Supreme Court Enlargement of Criminal Appellate Jurisdiction Act, 1972, in the light of recent judicial decisions has been carefully examined. The book is divided into two Parts. Part I contains 'General Principles' and Part II provides a summary of the Chapters in Part I. There are two Appendices. Appendix I sets out the History of the Law of Evidence in India and the Scheme of the Indian Evidence Act. Appendix II furnishes some Illustrative cases bearing on circumstantial Evidence and Approver Evidence. It is pleasing to note that the author has taken into account all the leading decisions rendered since the last edition and also the latest trends. The book will be particularly helpful to law students and lawyers.

------

15. PRINCEP'S COMMENTARIES ON CODE OF CRIMINAL PROCEDURE. 17th Edition Revised *by M.C.Desai*, (retired Chief Justice), Gyanendra Kumar (Retired Judge), R.Mitra and R.B.,Sethi. (Published by Law Publishers, Sardar Patel Marg, Allahabad), 1984. Price Rs.330/-.

The book under notice is its diamond jubilee edition. It is a prodigious work running to 1710 pages. The Criminal Procedure Code is the pivot round which revolves the machinery of Criminal Justice. There are several well-known books on the Code, the works of Princep, Dr.Nandlal, Sohoni, Sarkar and others. Among these an outstanding contribution is the one by Princep which is now in its 17th Edition. The legal profession as well as the judiciary have regarded it as a classic.

The Criminal Procedure Code is exhaustive only as to the matters covered by it specifically, as to the rest every procedure

is permissible unless it is prohibited. In many provisions of the Code the Courts have been vested with discretion a discretion not controlled by fixed rules of law but to be exercised in the particular circumstances of each case according to principles of reason and justice and not whimsically or capriciously. In the words of Sir Lawrence Jenkins: "Not one jot or one tittle can be taken away from or added to the plain and express provisions of the legislation by any decision of Court; nor can this discretion vested by the section in the Court be crystallised or restricted by any series of cases. It remains un-tramelled and free, to be fairly exercised according to the exigencies of each case" (See I.L.R. 41 Cal. 446 at 457). The provisions of the Code have to be understood accordingly. These provisions have to be taken with the entire legal system and read with other enactments having an impact on them like the Indian Evidence Act.

The book under notice contains a section-wise commentary on the Criminal Procedure Code, Act 2 of 1974. Amendments to the text of the Code till February 1984 have been incorporated. A recent one is the Criminal Law (Second Amendment) Act, 1983 adding a new section 198-A, and a new Chapter XX-A added in the First Schedule, besides amending several sections of the Code. Inasmuch as the previous edition was of the year 1964, being prior to the enactment of the new Code, comparative charts of the new sections and old sections under the new Code and the repealed Code respectively has been provided. Another comparative chart of the old and the new sections of the repealed Code and the current Code is also furnished. Synopsis given in the beginning of the notes to each section helps the reader to locate the required point at a glance. The book gives a comprehensive and thorough exposition affording an enlightening and dependable commentary on the Code. Case law is surveyed up to February 1984. The notes are critical and analytical and not a mere store-house of cases. The book fully sustains the high reputation enjoyed by the earlier editions.

16. THE INSTITUTION OF PROPERTY, LEGALLY, HISTORICALLY AND PHILOSOPHICALLY REGARDED *by R.S.Bhalla*, 1984 (Published by Eastern Book Company, 34, Lalbagh, Lucknow-226 001). Price Rs.80/-.

Through the institution of property the economic needs of men are met. The concept of property stems from man's instinct to secure the needs for his living. To ensure fulfilment of the needs of the individual control of things became necessary. This, at the beginning was achieved by appropriating from Nature whatever material he can for the purpose. Property thus arose by occupation of *res nullius*. The ancient Hindus and Roman jurists have propounded this theory of property. Property was regarded as sacred and private property was protected by law. The needs of men were however changing from time to time because of development, social and cultural, new discoveries and inventions etc. With changes in the needs of men the resources available to men to meet them also changed. There is however no denying that in all circumstances the institution of property is concerned with satisfaction of the individuals and that if the institution became oblivious to it, it would have ceased to fulfil its proper function. Over the centuries the concept of property has suffered many vicissitudes. Use value gave place to exchange value and again to money value. Contract and corporate holding produced their impact. Private property lost in a large measure its sanctity. Socialism, communism and other forces have exerted considerable influence.

The book under notice is a critical study of the institution of property. It falls into three main parts - the analytical, the historical and the philosophical. There are 'seven chapters'. The analytical part takes in Chapter I, the historical part takes in two chapters, namely, Chapters II and III and the philosophical part the remaining chapters IV to VII. Chapter I contains a structural Analysis of the Institution of Property and Related Problems. Chapter II discusses the Early Forms

of the Institution of Property. Chapter III reviews the Development of the Concept of Property and Related Problems. Chapter IV examines the justification of Private Property. Chapter V deals with the Socialist Critique of Private Property and Chapter VI with the Movement Towards a Socialised conception of Property. Chapter VII sets out the conclusions of the author.

According to the author (see preface) "the forms of ownership which developed in the course of evolution of the institution of property lost contact with the basic idea of the institution of property - the satisfaction of needs of each individual" and he "is arguing for the restoration and understanding of the institution of property in terms of its proper function in satisfying needs of individuals". The author's conclusions are that whatever be the developments in the institution of the basic and most fundamental idea that each individual should have sufficient goods to meet his needs cannot be lost sight of (p.193), but the predominant function of the institution has always been and will always be to fulfil economic needs or demands asserted by persons in society *(ibid)*.

The book deals with an abstract but all the same an interesting subject in a thought-provoking manner. It can be read with profit by lawyers, students and academicians alike.

------

17. A GUIDE TO COMPANY FORMATION *by N.H.Bhatter and C.N.Fernandez, 1984.* (Published by N.M.Tripathi Private Limited, Bombay). Price Rs.55/-.

The corporate form of organisation is becoming increasingly popular. The number of new companies registered each year is growing apace. The Companies Act is designed to protect various classes of interests interested in the working of companies such as shareholders, creditors, employees, Government and the General Public. Considerable discipline is called for on the part of the entrepreneur in carrying out his activities. At every stage in the formation of a company the entrepreneur needs skilful and dependable guidance to eliminate avoidable losses and delays, to prepare documents like the Memorandum and Articles of Association so as to avoid pitfalls and legal deficiencies. The instant book is designed to afford such guidance on company formation procedures and principles.

The entire spectrum is covered in eleven Chapters dealing respectively with The Corporate Entity, Classes of Companies The Company's name, Drafting the Memorandum of Association Drafting the Articles of Association, Documents precedent to Registration, Incorporation and its Effect, Pre-Incorporation Contracts and Promoters, Commencement of Business, Related Enactments and Regulations, Corporate Taxation. There are seventeen Appendices.

The instant book explains the procedures in a simple manner making for easy understanding not only by the professionals like Chartered Accountants and Lawyers but also by the promoters themselves. The Chapter on Related Enactments and Regulations will serve as a ready reference on all the other Acts and Regulations which may have relevance to a new Company. The book will be highly useful to entrepreneurs, Accountants, Advocates, Consultants and all persons associated with or interested in the Corporate sector.

------

18. T.S.VENKATESA IYER'S SALE OF GOODS AND PARTNERSHIP ACTS. Revised and enlarged 4th Edition, 1984. (Published by Asia Law House, Hyderabad-500 002). Price Rs.100/- (in India); U.K. £15; U.S. 30$.

A knowledge of the law relating to sale of goods and partnership is indispensable to traders, merchants and businessmen in their day to day work. The Sale of Goods Act and the Indian Partnership Act, both modelled on corresponding English Acts with modifications to suit Indian conditions have been on the statute book

since 1932. An exposition of the principles in a lucid manner eschewing technical terms in the light of decided cases, purveying practical information and providing Rules framed under the Act as well as model Forms would always be a desideratum.

The book under notice reproduces in substance the commentaries on these enactments by the late Mr.Venkatesa Iyer as part of his treatise on the Law of Contracts. Comparative Tables have been provided showing the corresponding sections of the Indian and English Acts. The Rules framed under the Partnership Act have been furnished as also the texts of the English Sale of Goods Act and Partnership Act. Leading decisions, English and Indian, have been considered. The commentaries are marked by analysis and lucid presentation. The book is a welcome publication.

------

19. CONSUMER PROTECTION AND LEGAL CONTROL, Edited by *P.Leelakrishnan*, 1984. (Published by Eastern Book Company, 34, Lalbagh, Lucknow-226 001). Price Rs.60/-.

Consumer protection is a new horizon in Indian Law. The consumer movement is still in its infancy in this country. The consumer is concerned not only with fast escalating prices and absence of price control but also with the quality of the goods he is induced to purchase, correctness of the measure, availability of goods etc. Consumer justice implies securing to the consumer articles, goods or services equivalent to the payment made by him without violating the prescribed or impliedly agreed or understood quantity and standard. The Government has no doubt enacted legislation like the Prevention of Food Adulteration Act and taken various steps to control prices and check inflation. There are seven Departments mainly dealing with matters relating to consumer protection. Their impact however is very slight. In the U.S., U.K. and West European countries measures on a massive scale have been adopted for the protection of the consumers.

The present book contains 24 select papers presented at a U.G.C. National Seminar at the University of Cochin in 1981 on Consumer Protection and Legal Control. The book is laid in 9 Parts. Part I is Introductory dealing with Consumer Protection in general. Part II deals with Consumerism and Part III is devoted to Consumer Protection and the Constitution Part IV discusses consumer and Access to Justice analysing in detail the technology of Public Interest litigation developed recently to get the judicial machinery moving. Part V considers the extent of Consumer protection available at present. Part VI concerns itself with Consumer Protection and State Regulation. Part VII deals with Consumer and Industrial Law and Part VIII with Consumer Protection and Industrial Law. Part IX covers Consumer Interest and Taxation.

The instant book examines in depth the diverse aspects of the problem and attempts to evolve viable measures to control and solve the evil of consumer exploitation. It is to be hoped that the suggestions will receive serious attention at the hands of the Government and the Public. The book is a pioneering work of its kind on the subject and is bound to inspire further debates on the subject.

20. LAW AND ENVIRONMENT, Edited by *Leelakrishnan*, 1984. (Published by the Department of Law, University of Cochin, Cochin-682 022). Price Inland Rs.45/-; Foreign £4 or $8 (U.S.).

Environmental awareness in India is relatively recent. It is said that 70% of the available water in the country is polluted, that 73 million man-days are lost every year due to water-related diseases and the consequent annual loss in production amounts to 600 crores of rupees. Environmental deterioration has taken different forms and shapes, such as abuse of surroundings round about human settlements; pollution of rivers and lakes; indiscriminate felling of trees, industrial pollution, marine pollution

etc. In the context of rapid and increasing industrialisation and population explosion protection of the environment has become a challenging task and a matter of urgency. A synthesis between development and environmental protection, in other words, between production and protection has become a great problem wherein law, ecology, economics, science and technology have a part to play. The National Environmental Policy envisages both conservation and development. How best could this be realised is the question. There is more than sporadic legislation relating to the matter. Section 12 of the Factories Act, 1948; Section 441 of the Calcutta Municipal Act, 1951; the Maharashtra Water Pollution Act, 1970; the Water (Prevention and Control of Pollution) Act of 1974; the Forest Act, 1977 etc. But these laws have not proved effective; implementation is poor and tardy; prosecution of delinquents seldom succeeds due to the application of the technical rules of evidence of the Indian Evidence Act and the insistence on strict standard of proof as in criminal trials; the slow moving judicial machinery is not equal to the task where expeditious action is required.

The book under notice is the outcome of the deliberations at a U.G.C. sponsored National Seminar held on Environmental Law in January 1983 in the University of Cochin, Department of Law. The book is divided into 24 Chapters, in 7 parts. Part I serves as an Introduction. Part II deals with Industrial Pollution. Part III examines Judicial Remedies and the Judicial Role. Part IV contains a critical appraisal of the Environmental Protection Machinery. Part V has a look at the Enforcement aspects. Part VI considers certain International norms. Part VII deals with the impact of development on resources. The book thus highlights the magnitude of environmental deterioration as well as the specific problems arising from industrialisation etc. The study is in depth and provides much food for sober thinking and effective action. The publishers have rendered great service in bringing out this valuable contribution to the subject of Law and Environment.

21. PUBLIC ENTERPRISES AND FUNDAMENTAL RIGHTS (Basic Papers and Discussions at a National Seminar) Edited *by Laxmi Narain and B.S.Murthy, 1984.* (Published by N.M.Tripathi Private Limited, Bombay). Price Rs.55/-.

Public Enterprises are constantly under strain due to unpredictable and demanding evironment. A new dimension has been added by Supreme Court decisions holding "autonomous corporations" to be "State or other authority" within the meaning of Art. 12 of the Constitution, thereby subjecting them to the writ jurisdiction of the superior Courts for enforcement of fundamental rights against them. While private sector undertakings are allowed to function untramelled and without continual interference by Courts with their administrative decisions public enterprises occupy a different position in this respect. Whereas the labour in private industry had protection only under labour laws and the Government Servants under Arts. 309 to 311, the labour in industries run by Government would have protection both under the labour law and Part III of the Constitution. Another worrying factor is that the criteria adopted for deciding whether a public undertaking is a "State or other authority" have varied with different approaches adopted by the Courts at different times. Recently in *Som Prakash v. Union of India,* A.I.R. 1981 S.C. 212 while two Judges of a Bench of three Judges considered the status of a Government Company as "other authority" under Art. 12, the third while accepting that view having regard to a higher decision of the Supreme Court in the *Airport Authority case,* A.I.R. 1970 S.C. 1628 went on to observe that he would have welcomed a wider range of debate on the fundamental principles involved and the implications flowing from the definition of a "Government Company" in the Companies Act of 1956. Incidentally it may be noticed that a unanimous decision of five Judges in APSRTC v. I.T.O., A.I.R. 1964 S.C. 1486 which had considered almost all the facts like vesting of property, making of profits and distribution thereof, independent character of the entity, Corporate exis-

tence, Government control in all material matters - facts treated in later cases as determinative of the question whether a Government Company or public enterprise created by statute in which the Government held all the shares or a majority of shares was "other authority" within the meaning of Art. 12, and concluded that the income earned by the autonomous corporation in that case was not income of the "State" within Art. 289 (1) of the Constitution and was therefore taxable was not referred in the later cases. It is to be hoped that the Supreme Court will set at rest all doubts on the matter.

A National Level Seminar of Scholars in law and business administration and public enterprise management held at Hyderabad considered in depth the subject of Public Enterprises and Fundamental Rights from various angles such as (1) the Philosophy that should guide the establishment and operations of the Public Sector Corporations, how far social justice should be their policy guide besides industrial and business efficiency, (2) identification of the actual and potential claimants regarding the operation of public sector corporations, the nature of their claims and the Governmental institutions available to decide the claims and counterclaims, (3) the desirability of the exercise of judicial control through writs, (4) the interpretation to be given to the expression "State or other authority" in Art. 12 and (5) alternatives that may be adopted instead of the Court's interference. The Seminar has not provided solutions to the issues raised. Its utility lies in the interest that it generates among those who shape the policy decisions. The instant book contains the basic papers and account of the discussions at the Seminar. These contain valuable material providing new insights to the constitutional lawyer and the public enterprise manager.

Also received:

22. DISCIPLINE IN INDUSTRY (A Guide to Disciplinary Proceedings) *by K.Soundarraj* 73 pages, First Edition, 1984. [Copies available with the Author at 12, Agathur Kandaswami Illam, Eighth Street, Dr. Radhakrishnan Road, Mylapore, Madras-600 004]. Price Rs.12/-.

23. MARCH OF INSURANCE LAW 1983-84 (Supplement to Srinivasan's Insurance Law - 4th Edition) *by M.N.Srinivasan*, July 1984. [Published by Ramanuja Publishers, 'Sri Madhura Puri', No.4, 9th Main Road, Malleswaram, Bangalore-560 003]. Price Rs.6/-.

JUSTICE GOKULAKRISHNAN'S APPOINTMENT AS CHIEF JUSTICE, GUJARAT HIGH COURT.

The appointment of Justice Gokulakrishnan as the Chief Justice of the Gujarat High Court will be warmly and widely welcomed. He has been a Judge of our High Court from 11—7—1969 for well nigh sixteen years, and the seniormost puisne Judge from 6—11—1979. He has officiated as Chief Justice on quite a number of occasions. After a period of mild tinkering and much vacillation the Central Government seems to be firmly implementing its declared policy of manning the Chief Justiceships of the High Courts execpt under special circumstances with Judges brought from outside the concerned State. Inevitably, Justice Gokulakrishnan could not be Chief Justice of our High Court, though but for such policy he might have been appointed to that post a few years ago. Litigation before the Gujarat High Court centres mainly round contracts and commercial law, fiscal laws and taxation statutes, industrial and labour law, arbitration etc. Justice Gokulakrishnan is known to be a very painstaking and receptive Judge and with his long experience as a Judge should be at home in every branch of the law and the Constitution. His close association with several musical and social bodies would make it easy for him to participate in social activities in Ahmedabad. Justice Gokulakrishnan carries with him in an abundant measure the goodwill of the Madras Bar. We extend our hearty and respectful felicitations to him on his new assignment.